

# Rights of Minors in Connecticut

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*A Guide to Resources in the Law Library*

*Edited by*

**Barbara J. Bradley  
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Connecticut Judicial Branch  
*Law Libraries*

**2004 Edition**

"All light is valuable on a darken path"  
DeQuincy

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These guides are provided with the understanding that they represent only a starting point to legal research.

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# Chapter 1

## Rights of Minors in Connecticut

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- “Except as otherwise provided by statute ... the terms ‘**minor**’, ‘**infant**’ and ‘**infancy**’ shall be deemed to refer to a person under the age of eighteen years and any person eighteen years of age or over shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities as persons heretofore had at twenty-one years of age, and ‘**age of majority**’ shall be deemed to be eighteen years” CONN. GEN. STATS. §1-1d.
- “‘**Child**’ means any person under sixteen years of age...;” CONN. GEN. STATS. §46b-120(1).
- “‘**youth**’ means any person sixteen or seventeen years of age;” CONN. GEN. STATS. §46b-120(2).
- “‘**youth in crisis**’ means any youth who, within the last two years, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode; (B) is beyond the control of parents, guardian or other custodian; or (C) has four unexcused absences from school in any one month or ten unexcused absences in any school year” CONN. GEN. STAT. §46B-120(3).
- “‘**family with service needs**’ means a family which includes a **child** who (A) has without cause run away from his parental home or other properly authorized and lawful place of abode; (B) is beyond the control of his parent, parents, guardian or custodian; (C) has engaged in indecent or immoral conduct; (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations; or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child;” CONN. GEN. STATS. §46b-120(8)
- “‘**delinquent act**’ means the violation of any federal or state law or municipal or local ordinance, other than an ordinance regulating the behavior of a child in a family with service need, or the violation of any order of the Superior Court;” CONN. GEN. STATS. §46b-120(11)
- “A **status offender** is someone charged with an offense that would not be a crime if committed by an adult. Common examples are running away from home, being truant from school, and being beyond parental control.” LAWRENCE K. FURBISH, [Background on Status Offenders](#), Connecticut General Assembly Office of Legislative Research Report No. 2003-R-0130 (Jan. 31, 2003)

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## **Legal Assistance**

- Children's Law Center, 893 Main Street, Willimantic, CT 06266  
Telephone: 860-423-0855  
Children's Lawline: 1-888-LAWDOOR

## **Internet Addresses**

- Connecticut Office of the Child Advocate <http://www.oca.state.ct.us/>
- Governor's Prevention Initiative for Youth <http://www.dmhas.state.ct.us/sig/>
- Child Welfare League of America: <http://www.cwla.org>
- Office of Juvenile Justice and Delinquency Prevention: <http://ojjdp.ncjrs.org>
- National Council of Juvenile and Family Court Judges: <http://www.ncjfcj.unr.edu/>
- American Bar Association, Juvenile Justice Center: <http://www.abanet.org/crimjust/juvjus>

## **Treated Elsewhere:**

- Child Custody Actions
- Best Interests of the Child Standard

# Emancipation in Connecticut

## *A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the criteria for statutory and common law emancipation, and the impact of emancipation on the status of minors and the obligations of parents.

### **DEFINITIONS:**

- Where the parent has absolutely renounced, by agreement or implication, all care and control of the child, he is emancipated.” *Town v. Anonymous*, 39 Conn. Sup. 35, 38, 467 A.2d 687 (1983).
- “A minor over the age of sixteen who, like the minor child here, voluntarily lives apart from her parents who exercise and attempt to exercise no control over her activities is emancipated by operation of common law... Further, that minor is a party who may petition, as may her parents, for an order of emancipation pursuant to General Statute §46b-150b...” *Town v. Anonymous*, 39 Conn. Sup. 35, 38, 467 A.2d 687 (1983).

### **STATUTES:**

- CONN. GEN. STAT. (2003)
- § 46b-150 Emancipation of minor. Procedure.
  - § 46b-150a Investigation of petition for emancipation. Report. Appointment of counsel.
  - § 46b-150b Order of emancipation
  - § 46b-150c Appeal
  - § 46b-150d Effect of emancipation
  - § 46b-150e Emancipation under common law.

### **LEGISLATIVE:**

- SUSAN PRICE-LIVINGSTON, EMANCIPATION PROCEDURES, Connecticut General Assembly, Office of Legislative Research, [Report No. 2002-R-0008](#) (Jan. 3, 2002).
- GEORGE COPPOLO, EMANCIPATION OF MINORS, Connecticut General Assembly, Office of Legislative Research, [Report No. 97-R-0163](#) (1997).
- SAUL SPIGEL, PARENTAL AUTHORITY OVER 16- AND 17- YEAR OLDS, Connecticut General Assembly, Office of Legislative Research [Report No. 98-R-1521](#) (1998).
- SUSAN GORANSON, “PARENTAL RESPONSIBILITY FOR 16- AND 17-YEAR OLDS, Connecticut General Assembly, Office of Legislative Research, [Report No. 94-R-816](#) (August 19, 1994).

### **COURT CASES:** (Connecticut)

- *In Re Thomas C.*, 44 Conn. Sup. 437, 691 A.2d 1140 (1996). “Although the petitioners’ stated reasons for seeking emancipation are understandable, the court finds that they do not meet the burden of good cause showing that it would be in the best interest of the child, or the parent, to emancipate Thomas.” (p. 444)
- *Wood v. Wood*, 135 Conn. 280, 63 A.2d 586 (1948). “‘An ‘implied emancipation’ results when the parent, without any express agreement, by his

acts or conduct impliedly consents that his minor son may leave home and shift for himself, have his own time, and the control of his earnings, and it may be inferred from and shown by the circumstances.’ *Rounds Bros. v. McDaniel*, 133 Ky. 669, 676, 118 S.W. 956.” (p. 284)

- *In Re Antina*, Superior Court, Juvenile Matters, judicial district of Middlesex at Middletown (November 26, 1996). *Juvenile’s petition for statutory emancipation granted*
- *In Re Addison A.*, Superior Court, Juvenile Matters, judicial district of Hartford/New Britain at Plainville, Docket No. 91-234 (April 16, 1992). *Parents’ petition for court ordered emancipation of their seventeen year old son denied*
- *Mills v. Theriault*, 40 Conn. Sup. 349, 499 A.2d 89 (1985). *Common law emancipation and child support obligation*
- *Nelson v. Nelson*, 22 Conn. Sup. 145, 164 A.2d 234 (1960). *Cusody and support order not entered when child was emancipated at time of dissolution*

#### **ENCYCLOPEDIAS:**

- 59 AM. JUR. 2d *Parent & Child* §§ 80-87 (1987).
- 43 C.J.S. *Infants* §§ 115-119 (1978).
- 67A C.J.S. *Parent & Child* §§ 5-9 (1978).
- Alice M. Wright, Annotation, *What Voluntary Acts of Child, Other Than Marriage or Entry into Military Service, Terminate Parent’s Obligation to Support*, 55 A.L.R. 5<sup>th</sup> 557 (1998).
- Annotation, Joel E. Smith, *Parent’s Obligation to Support Unmarried Minor Child Who Refuses to Live with Parent*, 98 A.L.R. 3d 334 (1980).

#### **PAMPHLETS:**

- LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, A TEENAGER’S GUIDE TO EMANCIPATION (October 1999).  
URL:  
[http://www.larcc.org/pamphlets/children\\_family/teen\\_emancipation.htm](http://www.larcc.org/pamphlets/children_family/teen_emancipation.htm)

#### **TEXTS & TREATISES:**

- 1 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN*, Ch. 15 (2d ed. 1994)
- MICHAEL J. DALE ET AL., *REPRESENTING THE CHILD CLIENT*, §3.05 (2000).

#### **LAW REVIEWS:**

- Francis C. Cady, *Emancipation of Minors*, 12 CONN. L. REV. 62 (Fall 1979).
- Julie S. Lavin, *Emancipation of Minors: A Doctrinal and Practical Analysis for Child Advocates*, 10 CONN. FAM. L. J., no. 3, 1992, at 1.
- Dana F. Castle, *Early Emancipation Statutes: Should they Protect Parents as Well as Children?*, 20 FAM. L. Q. 343 (Fall 1986).
- Katz, Schroeder & Sidman, *Emancipating Our Children: Coming of Legal Age in America*, 7 FAM. L. Q. 211 (1973).

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## Section 1.2

# Family with Service Needs

*A Guide to Resources in the Law Library*

**See 2003 Conn. Acts 257 (Reg. Sess.)** for amendments to Conn. Gen. Stat. §§ 46b-149b, 46b-150g and 46b-150f, new legislation pertaining to the implementation of an increase “in the age limit for purposes of jurisdiction in juvenile matters” and the establishment of a “pilot program in the probate district of Middletown for the purpose of exercising jurisdiction over and administering youth in crisis cases arising in said district in which the youths in crisis are not truants.” *Effective Oct. 1, 2003*

**SCOPE:**

Bibliographic resources relating to Connecticut’s Family With Service Needs law.

**SEE ALSO:**

- [§ 3 Runaways in Connecticut](#)
- [§ 4 Truancy](#)

**DEFINITION:**

- “‘**family with service needs**’ means a family which includes a **child** who (A) has without cause run away from his parental home or other properly authorized and lawful place of abode; (B) is beyond the control of his parent, parents, guardian or custodian; (C) has engaged in indecent or immoral conduct; (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations; or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child;” CONN. GEN. STATS. § 46b-120(7) (2003)

**STATUTES:**

CONN. GEN. STAT. (2003)

- § 10-198a Policies and procedures concerning truants.  
(c) If the parent or other person having control of a child who is truant fails to attend the meeting ... or if such parent or other person otherwise fails to cooperate with the school in attempting to solve the truancy problem, such policies and procedures shall require the superintendent of schools to file for each such truant ... a written complaint ... pursuant to section 46b-149 alleging the belief that the acts or omissions of the child are such that his family is a family with service needs.”
- § 17a-1 Definitions (*Department of Children and Families*)
- § 46b-120 Definitions of ‘child,’ ‘youth,’ ‘youth in crisis,’ ‘family with service needs,’ etc. (*Juvenile Matters*)
- § 46b-140 Disposition upon conviction of child as delinquent.

- § 46b-146 Erasure of police and court records.
- § 46b-148 Violation of valid court order by child of family with service needs.
- § 46b-149 Family with service needs. Complaint. Review by probation officer. Filing petition. Hearing. Order.
- § 46b-149a Duties of police officer re child of family with service needs.
- § 46b-149b Immunity of police officer or municipal official from parental liability.
- § 46b-149c Truancy and other family with service needs cases. Duties of judicial branch.
- § 46b-149d Demonstration project to establish school and community based truancy prevention initiative... Establishment of truancy or family with service needs docket. Duties of Court Support Services Division.

### **COURT RULES**

CONNECTICUT PRACTICE BOOK (2003 Edition)

- Chap. 27, Reception and Processing of Nonjudicial Delinquency, Family with Service Needs, or Youth in Crisis Complaint, or Petitions.
- Chap. 29, Reception and Processing of Delinquency, Child From Family with Service Needs and Youth in Crisis Petitions and Delinquency Informations.
- Chap. 30A, Delinquency, Family with Service Needs and Youth in Crisis Hearings.
- Chap. 31A, Delinquency, Family with Service Needs and Youth in Crisis Motions and Applications.

### **LEGISLATIVE:**

- SAUL SPIGEL, [PARENTAL CONTROL AND TEENAGERS' RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2002-R-0860 (Oct. 25, 2002).
- Lawrence K. Furbish, [FAMILY WITH SERVICE NEEDS \(FWSN\) LAW BACKGROUND](#), Connecticut General Assembly, Office of Legislative Research Report No. 97-R-0441 (March 20, 1997).
- SUMMARY OF 1998 PUBLIC ACTS, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH 204, *PA 98-183 An Act Concerning Truancy and other Family with Service Needs Cases*.

### **CLE SEMINARS**

- CONNECTICUT BAR ASSOCIATION, ADVANCED AND COMPLEX ISSUES IN JUVENILE LAW (Dec. 13, 1996).

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## Section 1.3

# Runaways in Connecticut

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**See 2003 Conn. Acts 257 (Reg. Sess.)** for amendments to Conn. Gen. Stat. §§ 46b-149b, 46b-150g and 46b-150f, for new legislation pertaining to the implementation of an increase “in the age limit for purposes of jurisdiction in juvenile matters” and the establishment of a “pilot program in the probate district of Middletown for the purpose of exercising jurisdiction over and administering youth in crisis cases arising in said district in which the youths in crisis are not truants.” *Effective Oct. 1, 2003*

### **SCOPE:**

Bibliographic resources relating to:

- the legal rights of minors who leave home without parental consent and
- the responsibilities of legal guardians and public authorities.

### **STATUTES:**

CONN. GEN. STAT. (2003)

- § 46b-120 Definitions of “child”, “youth”, “youth in crisis”, “family with service needs”, etc.
- § 7-282c Filing and dissemination of missing child reports.
- §§ 10-19m to 10-19p Youth service bureaus..
- § 17a-185 Police transportation of certain minors to facility for care.
- § 29-1e Missing Children Information Clearinghouse. Definitions. Duties. Missing Child Reports.
- § 45a-604 (5) ‘Guardianship’ means guardianship of the person of a minor, and includes: (A) The obligation of care and control; and (B) the authority to make major decisions affecting the minor’s welfare...
- § 45a-606 Father and mother joint guardians.
- § 46b-149a Duties of police officer re child of family with service needs.
- § 46b-150f Youth in crisis. Petitions. Court Orders. Violations.
- § 46b-150g Duties of police officer re youth in crisis.
- § 46b-151 to 46b-151g Interstate Compact on Juveniles (see especially Article IV)
- § 52-572 Parental liability for torts of minors

UNITED STATES CODE

- 42 U.S.C.A §§ 5701-5751 (West 1995 & Supp. 2003).
- 42 U.S.C.A. §§ 11431-11435 (West Supp. 1995) Education for Homeless Children and Youth.

### **LEGISLATIVE HISTORY:**

- 2000 Conn. Acts 177, 43 H.R. Proc., Pt. 18, 2000 Sess., p. 6041-6062. “... this legislation goes to the heart of family rights. The rights of parents and guardians to raise their children with appropriate support of the legal system. Sixteen and seventeen-year-olds will no longer be in the gray twilight zone. Not accountable to anyone.” (p. 6042)

**LEGISLATIVE  
REPORTS:**

- SAUL SPIGEL, [YOUTH IN CRISIS LAW](#), Connecticut General Assembly, Office of Legislative Research Report No. 2002-R-0786 (Sept. 23, 2002).
- LAWRENCE K. FURBISH, [BACKGROUND ON STATUS OFFENDERS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2003-R-0130 (Jan. 31, 2003).
- SAUL SPIGEL, [PARENTAL CONTROL AND TEENAGERS' RIGHTS](#), Connecticut General Assembly, Office of Legislative Research Report No. 2002-R-0860 (Oct. 25, 2002)
- SAUL SPIGEL, [PARENTAL AUTHORITY OVER 16- AND 17-YEAR OLDS](#), Connecticut General Assembly, Office of Legislative Research Report No. 98-R-1521 (December 22, 1998).

**REGULATIONS**

CONN. AGENCIES REGS. §§ 10-19m-1 to 10-19m-10 (1998).

- § 10-19m-1 “‘Youth Service Bureau’ means an agency operated directly by one or more municipalities or a private agency designanted to act as an agent of one or more municipalities for the purpose of evaluation, planning, coordination and implementation of prevention, intervention and treatment services for delinquent, pre-delinquent, pregnant, parenting and troubled youth, and for the provision of opportunities for youth to develop positively and to function as responsible members of their community.”

**CODE OF FEDERAL REGULATIONS**

- 45 C.F.R. Part 1351 (2002) “Runaway and Homeless Youth Program.”

**COURT CASES:**  
(Connecticut)

- *In Re Thomas C.* 44 Conn. Sup. 437, 691 A.2d 1140 (1996). “The present case is another example of the inability of parents, schools, courts and social service agencies to deal effectively with the so-called ‘grey area’ cases. Such cases involve sixteen and seventeen year old minors, who cannot be legally compelled to attend school or to obey the household rules, but whose parents are legally obligated to support and to shelter them.” (p. 442)

**TEXTS &  
TREATISE:**

- 2 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* § 20.15 (2d ed. 1994).
- MICHAEL J. DALE, *REPRESENTING THE CHILD CLIENT* § 5.02[3] (2002).
- EMILY PARADISE & ROBERT HOROWITZ, *RUNAWAY AND HOMELESS YOUTH: A SURVEY OF STATE LAW*, A.B.A. Center on Children and the Law (1994).

**ENCYCLOPEDIAS:**

- Joel E. Smith, *Annotation, Parent’s Obligation to Support Unmarried Minor Child Who Refuses to Live with Parent*, 98 A.L.R. 3d 334 (1980).

**LEGAL  
PERIODICALS:**

- John L. Bonee, *Runaway Children*, 48 CONN. BAR J. 360 (1974). “A person between the ages of sixteen and eighteen ... is neither defined as a child nor an adult, but a ‘youth’. There is no statute in force in Connecticut which makes it a status offense for youth to run away.” p. 375
- Carrie Che-Man Fung, M.S.W., *Foster Care Runaways: From Legislation to Progress Towards Self-Sufficiency*, 20 CHILDREN’S LEGAL RTS. J., Summer 2000, at 33.
- Karen A. Joe, *The Dynamics of Running Away, Deinstitutionalization Policies and the Police*, 46 JUV. & FAM. CT. L. J., Summer 1995, at 43.

**HOTLINES:**

- [National Runaway Switchboard](#): 1-800-621-4000  
3080 North Lincoln Avenue, Chicago, IL 60657  
email: [info@nrs Crisisline.org](mailto:info@nrs Crisisline.org)

<http://www.nrscrisisline.org/>

*Counseling and referral services 24-hrs*

**COMPILER:**

Barbara J. Bradley, Law Librarian, Connecticut Judicial Branch Law Library at  
Norwich, One Courthouse Square, Norwich, CT 06360. (860) 887-2398  
[barbara.bradley@jud.state.ct.us](mailto:barbara.bradley@jud.state.ct.us)

# Truancy in Connecticut

## *A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to:

- the legal responsibilities of parents, guardians, school districts and public officials concerning truants and
- judicial response to habitual truants

### **DEFINITIONS:**

- “For the purposes of this section, ‘**truant**’ means a child age five to eighteen inclusive, who is enrolled in a public or private school and has four unexcused absences from school in any one month or ten unexcused absences from school in any school year” CONN. GEN. STAT. §10-198a(a) (2003).
- “For the purposes of this section, ‘**habitual truant**’ means a child age five to eighteen, inclusive, enrolled in a public or private school and has twenty unexcused absences within a school year” CONN. GEN. STAT. §10-200 (2003).

### **STATUTES:**

CONN. GEN. STAT. (2003)

- § 10-184 Duties of parents. School attendance age requirements.
- § 10-185 Penalty
- § 10-198a Policies and procedures concerning truants.
- § 10-199 Attendance officers. Duties.
- § 10-200 Habitual truants.
- § 10-201 Fees for arresting truants
- § 10-202 Warrant and hearing.
- § 46b-149c Truancy and other family with service needs cases. Duties of judicial branch.
- § 46b-149d Demonstration project to establish school and community-based truancy prevention initiative. Sites. Grant eligibility. Establishment of truancy or family with service needs docket. Duties of Office of Alternative Sanctions.

### **REGULATIONS:**

CONN. AGENCIES REGS. § 10-76d-7 (1980) Referral

“Each board of education shall accept and process referrals from appropriate school personnel, as well as from a child’s parents,... in order to determine a child’s eligibility for special education and related services... Provision shall be made for the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance.”

### **LEGISLATIVE:**

- LAWRENCE K. FURBISH, [BACKGROUND ON STATUS OFFENDERS](#), CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH REPORT NO. 2003-R-0130 (Jan. 31, 2003).
- JUDITH LOHAM, [TRUANCY LAWS](#), CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH REPORT NO. 2000-R-0957 (October 13,

2000).

- SAUL SPIGEL, TRUANCY AND CURFEW LAWS, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH REPORT NO. 96-R-1273 (October 2, 1996).

**COURT CASES:**  
(Connecticut)

- *Campbell v. Board of Education*, 193 Conn. 93, 475 A.2d 289 (1984).  
“This case concerns the validity of the policy of a local school board that imposes academic sanctions for nonattendance upon high school students... The plaintiff claimed that the defendants’ policy was ultra vires in light of operative provisions of the Connecticut constitution and the United States constitution.” (p. 94)

**CLE SEMINARS**

- *Advanced and Complex Issues in Juvenile Law*, Conn. Bar Assoc. Seminar, Dec. 13, 1996.

**ENCYCLOPEDIAS:**

- Janet Boeth Jones, Annotation, *Truancy as Indicative of Delinquency or Incurrigibility, Justifying Commitment of Infant or Juvenile*, 5 A.L.R. 4<sup>th</sup> 1211 (1981).
- Janet Boeth Jones, Annotation, *Conditions at School as Excusing or Justifying Nonattendance*, 9 A.L.R. 4<sup>th</sup> 122 (1981).

**TEXTS & TREATISE:**

- THOMAS B. MOONEY, A PRACTICAL GUIDE TO CONNECTICUT SCHOOL LAW 268-271, 279-280 (2d ed., 2000).
- 3 JAMES A. RAPP, EDUCATION LAW § 8.03 (2001).
- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN Ch. 20 (2d ed. 1994).

**LAW REVIEWS:**

- Karl F. Dean, *Criminalization of Truancy*, 34 NEW ENGLAND L. REV. 589 (2000).
- Joan L. Byer & Jeffrey Kuhn, *A Model Response to Truancy Prevention: The Louisville Truancy Court Diversion Project*, JUV. & FAM. CT. J., Winter 2003, at 59.

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# Section 1.5

## School Discipline in Connecticut

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### Pending Federal Legislation:

**H.R. 1350**, “[Improving Education Results for Children with Disabilities Act.](#)”

Sections 204 and 205 revise disciplinary provisions of the Individuals with Disabilities Education Act (IDEA).

### **SCOPE:**

Bibliographic resources relating to student discipline and the due process rights of students.

### **STATUTES:**

CONN. GEN. STAT. (2003)

- § 10-222d Policy on bullying behavior.
- § 10-233a. Definitions
- § 10-233b Removal of pupils from class.
- § 10-233c Suspension of pupils
- § 10-233d Expulsion of pupils
- § 10-233e Notice as to disciplinary policies and action.
- § 10-233f In-school suspension of pupils. Reassignment.
- § 10-233g Reports of principals to police authority concerning physical assaults upon school employees by students.
- § 10-233h Arrested students. Reports by police, disclosure, confidentiality. Police testimony at expulsion hearings.
- § 10-233i Students placed on probation by a court.
- § 10-233j Student possession and use of telecommunication devices.
- § 10-235 Indemnification of teachers, board members, employees and certain volunteers and students in damage suits; expenses of litigation.
- § 53a-217b Possession of a weapon on school grounds: Class D felony.

UNITED STATES CODE

- 20 U.S.C.A. § 8921-8923 (West 2000) Gun Possession.  
§ 8921(b)(1) “Except as provided in paragraph (3), each State receiving Federal funds under this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of such local educational agency to modify such expulsion requirement for a student on a case-by-case basis.”



### **LEGISLATIVE:**

- JUDITH LOHMAN, SCHOOL EXPULSION PROCEDURE, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, [Report No. 2002-R-0849](#) (Oct. 15, 2002)
- JUDITH LOHMAN & KRISTINA ARSENAULT, SCHOOL DISCIPLINE POLICIES AND PROCEDURES, Connecticut General Assembly, Office of Legislative Research, [Report No. 2002-R-0123](#) (Feb. 7, 2002).
- D'ANN MAZZOCCA, RANDOM DRUG TESTING OF STUDENTS, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH REPORT NO. 97-R-1289 (November 4, 1997).

### **COURT CASES:**

- New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed. 2d 720 (1985).  
“Under ordinary circumstances, a search of a student by a teacher or other school official will be ‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” (p. 341)
- Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed. 2d 725 (1975).  
“Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires ... that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence authorities have and an opportunity to present his side of the story.” (p. 581)
- Packer v. Board of Education, 246 Conn. 89, 717 A.2d 117 (1998).  
“In order to subject a student to expulsion, conduct off school grounds must not only violate school policy, it must also be ‘seriously disruptive of the educational process’ for reasons other than the fact that it violated school policy,” (p. 112)  
“...the language of §10-233d indicates that the legislature intended that the phrase ‘seriously disruptive of the educational process’ apply to conduct that markedly interrupts or severely impedes the day-to-day operation of a school.” (p. 116-117)
- Op. Att’y Gen 89-023 (1989).  
“We conclude that Conn. Gen. Stat. §§ 10-233c and 10-233d permit the transfer or exclusion of students on the basis of off-campus misconduct if such behavior threatens the safety of school property or the welfare of the persons who work or study there.” (p. 130)
- Perry v. Wallingford Bd. of Education, Superior Court, judicial district of New Haven at New Haven, Docket No. CV94-0361257S (August 3, 1994).  
“The statute which authorizes boards of education to expel or suspend students from attendance at public schools ... does not provide for an appeal to the court from such administrative decisions.”
- Ambrose v. Singe, Superior Court, judicial district of Danbury, Docket No. 320896, 19 Conn. L. Rptr. 639 (June 10, 1997).  
*Plaintiff alleged that school officials were negligent in so far as they failed to discipline a student who threatened and finally attacked the plaintiff, and that the city was liable pursuant to Conn. Gen. Stat. §10-235.*

### **FORMS:**

- 6 EDUCATION LAW Ch. F5 (James A. Rapp ed., 1984).  
§F5.01 Student Control and Discipline  
*Includes sample code of discipline, code of student conduct, and emergency discipline procedures*  
§F5.02 Disciplinary Procedures

*Includes sample notices for detention, probation, suspension, student misconduct, conferences, etc.*

- 22 AM. JUR. PL. & PR. FORMS, *Schools* §§171-179 (1992).  
Form 172 “Petition or application—To compel readmission of expelled student—Insufficient evidence at expulsion hearing”  
Form 179 “Complaint in federal court—To enjoin school authorities from preventing readmission of student indefinitely expelled for alleged intoxication—By next friend”

#### **ENCYCLOPEDIAS:**

- 68 AM. JUR. 2d *Schools* §§ 269-291 (1993).
- 78A C.J.S. *Schools and School Districts* §§789-802 (1995).
- Daniel E. Feld, Annotation, *Right to Discipline Pupil for Conduct Away from School Grounds or Not Immediately Connected With School activities*, 53 A.L.R. 3d 1124 (1973).
- Jonathan M. Purver, *Teacher’s Use of Excessive Corporal Punishment*, 20 P.O.F. 2d 511 (1979).

#### **TEXTS & TREATISE:**

- THOMAS B. MOONEY, A PRACTICAL GUIDE TO CONNECTICUT SCHOOL LAW (2d ed., 2000).  
Student Discipline, p. 281-306  
Search & Seizure, p. 329-342  
Special Education, p. 441-460
- [Legal Assistance Resource Center of Connecticut](#), RULES, REGULATIONS AND RIGHTS IN SCHOOL (2002).
- 3 JAMES A. RAPP, EDUCATION LAW §§ 8.06, 9.01-9.06 (2001).  
§ 8.06[3] “Academic Dishonesty or Fraud”  
§ 8.06[4] “Academic Evaluation and Discipline”  
Ch. 9 “Student Control and Discipline”
- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN Ch. 25 (2d. ed. 1994).  
§§ 25.16-25.23 “The Right to be Free From Unreasonable Searches and Seizures”
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT §§ 6.04, 5.05 (2000).
- PAUL R. KFOURY, CHILDREN BEFORE THE COURT: REFLECTIONS ON LEGAL ISSUES AFFECTING MINORS Ch. 9 (2d ed., 1991).
- KATHLEEN A. HEMPELMAN, TEEN LEGAL RIGHTS: A GUIDE FOR THE ‘90S 31-41 (1994).

#### **LAW REVIEWS:**

- Ira W. Bloom, *Expulsion of Students for Activities Off School Grounds*, 7 CONN. LAWYER, May 1997, at 12.
- Andrew Brownstein, *The BullyPulpit: Post-Columbine Harassment Victims Take Schools to Court*, TRIAL, Dec. 2002, at 12.
- Anthony J. DeMarco, *Suspension/Expulsion – Punitive Sanctions From the Jail Yard to the School Yard*, 34 NEW ENGLAND L. REV. 565 (2000).
- Robert G. Fraser, *Student Discipline from the Perspective of the School Attorney*, 34 NEW ENGLAND L. REV. 573 (2000).
- Victoria J. Dodd, *Can We Create Violence-Free Schools That are Still Free?* 34 NEW ENGLAND L. REV. 623 (2000).
- Richard Lawrence, *Controlling School Crime: An Examination of Interorganizational Relations of School and Juvenile Justice Professionals*, 46 JUV. & FAM. CT. J., Summer 1995, at 3.
- Anne Proffitt Dupre, *Should Students Have Constitutional Rights? Keeping order in the Public Schools*, 65 GEO. WASH. L. REV. 49 (1996).

- Donald H. Stone, *Crime & Punishment in Public Schools: An Empirical Study of Disciplinary Proceedings*, 17 AM. J. TRIAL ADVOC. 351 (1993).
- Mary H.B. Gelfman & Jewel A. Gutman, *How to Handle Student Discipline Cases*, 37 PRACT. LAW. 43 (1991).
- Myron Schreck, *The Fourth Amendment in the Public Schools: Issues for the 1990s and Beyond*, 25 URBAN LAW.117 (1993).

**WEB SITES:**

- [American Civil Liberties Union – Student Rights](http://www.aclu.org/StudentsRights/StudentsRightsMain.cfm)  
http://www.aclu.org/StudentsRights/StudentsRightsMain.cfm

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# Section 1.6

## Freedom of Speech in Public Schools

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### *A Guide to Resources in the Law Library*

#### **SCOPE:**

Bibliographic resources relating to student rights to freedom of expression in public schools.

#### **CONSTITUTION:**

- CONN. CONST. Art.I, § 4.  
“Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.”
- CONN. CONST. Art.I, § 5.  
“No law shall ever be passed to curtail or restrain the liberty of speech or of the press.”
- U.S. CONST. amend. I.  
“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

#### **CASES:**

- Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969). *The Tinker standard*  
“In our system, state-operated schools may not be enclaves of totalitarianism... Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State... In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” (p. 511)
- Bethel School District v. Fraser, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed. 2d 549 (1986).  
“Unlike the sanctions imposed on the students wearing armbands in *Tinker*, the penalties imposed in this case were unrelated to any political viewpoint. The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as respondent’s would undermine the school’s basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students. Accordingly, it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the “fundamental values” of public school education.” (p. 685)
- Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed. 2d 592 (1988). *Censorship of articles in a high school newspaper*  
“Accordingly, we conclude that the standard articulated in *Tinker* for

determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” (p.272-273)

- Byars v. City of Waterbury, 47 Conn. Sup. 342 (2001). “The issue in the above captioned action is the constitutionality of a school dress code imposed by the Waterbury board of education on students attending the Waterbury public schools”  
“The plaintiffs have not claimed that the school dress code at issue violated any right to freedom of speech or expression, and the court makes no finding in this regard...The plaintiffs have failed to prove their other claims.” (p. 371)

#### **ENCYCLOPEDIAS:**

- 68 AM. JUR. 2d *Schools* §§ 284—289 (2000).
- Robin Cheryl Miller, Annotation, *Validity of Regulation by Public-School Authorities as to clothes or Personal Appearance of Pupils*, 58 A.L.R. 5th 1 (1998).
- Mitchell J. Waldman, Annotation, *What Oral Statement of Student is Sufficiently Disruptive so as to Fall Beyond Protection of First Amendment*, 76 A.L.R. Fed. 599 (1986).
- Teresia B. Jovanovic, Annotation, *Propriety, Under First Amendment, of School board’s Censorship of Public School Libraries or Coursebooks*, 64 A.L.R. Fed 771 (1983).
- Donald T. Kramer, Annotation, *Validity, Under Federal Constitution, of Public School or State College Regulation of Student Newspapers, Magazines, or Other Publications –Federal Cases*, 16 A.L.R. Fed. 182 (1973).

#### **TREATISES:**

- THOMAS B. MOONEY, A PRACTICAL GUIDE TO CONNECTICUT SCHOOL LAW 320—329 (2d ed., 2000).
- 3 JAMES A. RAPP, EDUCATION LAW § 9.04 (2001).
- 4 JAMES A. RAPP, EDUCATION LAW §§ 11.01—11.04 (2001).
- 2 MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLEINT § 6.07 (2002).
- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN § 25.06 (1994).

#### **LAW REVIEWS:**

- Louis John Seminski, Note, *Tinkering with Student Free Speech: The Internet and the Need for a New Standard*, 33 RUTGERS L. J. 165 (2001).
- Linda Hills, “Zero Tolerance” for Free Speech (*Threatening Speech in Schools*), 30 J. OF L & EDUC. 365 (2001).
- Whitney A. Kaiser, *The Use of Internet Filters in Public Schools: Double Click on the Constitution*, 34 COL. J.L. & SOC. PROBS. 49 (2000).
- Clay Clavert, *Free Speech and Public Schools in a Post-Columbine World: Check Your Speech Rights at the Schoolhouse Metal Detector*, 77 DENV. U.L. REV. 739 (2000).

#### **INTERNET RESOURCES:**

- [American Civil Liberties Union – Student Rights](#)
- [Student Press Law Center](#)

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## Section 1.7

# Curfews in Connecticut

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### *A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to juvenile curfew ordinances and the constitutional issues raised by juvenile curfews.
- STATUTES:** CONN. GEN. STAT. (2003)
- §7-148 Scope of municipal powers
  - §7-148(c)(7)(F)(iii) “Any municipality shall have the power to do any of the following, ... Prohibit the loitering in the nighttime of minors on the streets, alleys or public places within its limits;”
- LOCAL ORDINANCES**
- New London, Conn., Ordinance 02-22-94-6 (April 4, 1994).
  - Hartford, Conn., Code ch. 25, § 25-4 (Sept. 16, 1993).
  - Bridgeport, Conn., Code ch. 9.12, art. I, §§ 9.12.010 - 9.12.060.
  - New Britain, Conn., Code ch. 16, art. VII, §§ 16-120 - 16-126.
- LEGISLATIVE:**
- JASON K. MATTHEWS, [CONSTITUTIONALITY OF HARTFORD’S LOITERING ORDINANCE](#), Connecticut General Assembly, Office of Legislative Research Report No. 2002-R-0296 (Mar. 27, 2002).
  - SAUL SPIGEL, [TRUANCY AND CURFEW LAWS](#), Connecticut General Assembly, Office of Legislative Research Report No. 96-R-1273 (October 2, 1996).
- COURT CASES:**
- [Papachristou v. City of Jacksonville](#), 92 S. Ct. 839 (1972). “This ordinance is void for vagueness, both in the sense that it ‘fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,’ ... and because it encourages arbitrary and erratic arrests and convictions” (843).
  - [Ramos v. Town of Vernon](#), No. 01-7118 (2d Cir. June 2, 2003). [The U.S. Court of Appeals for the 2nd Circuit](#) ruled that the Town of Vernon curfew ordinance violates the constitutional rights of juveniles. “The constitutionality of a curfew is determined by balancing the recognized interests the state has in protecting children and fighting crime against the constitutional right of all citizens, including juveniles, to move about freely. Here, Vernon’s curfew interferes with juveniles’ freedom of movement, that is, their right to walk the streets, move about at will, meet in public with friends, and leave their houses when they please. This right to free movement is a vital component of life in an open society, both for juveniles and adults.”
  - [Ramos v. Town of Vernon](#), 254 Conn. 799, 762 A.2d 705 (2000). “This case, which comes to us upon our acceptance of six certified questions from the United States District Court for the District of Connecticut ..., asks us to consider the *facial* validity, under the Connecticut constitution, of the

nighttime juvenile curfew ordinance of the named defendant, the town of Vernon” (801).

- Ramos v. Town of Vernon, 48 F. Supp. 2d 176 (D.Conn. 1999).  
“... the court hereby enters a declaratory judgment that Vernon’s curfew ordinance does not violate the United States Constitution for any of the reasons alleged by the plaintiffs” (188).  
Hutchins by Owens v. District of Columbia, 188 F.3d 531 (D.C. Cir, 1999)  
*Curfew law found constitutional; district court’s grant of summary judgment reversed*  
“That the rights of juveniles are not necessarily coextensive with those of adults is undisputed, and ‘unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, i.e., the right to come and go at will.’...” (p. 539)
- Qutb v. Strauss, 11 F.3d 488 (5<sup>th</sup> Cir. 1993), *cert. denied*, 511 U.S. 1127 (1994).  
“In conclusion, we find that the state has demonstrated that the curfew ordinance furthers a compelling state interest, i.e., protecting juveniles from crime on the streets. We further conclude that the ordinance is narrowly tailored to achieve this compelling state interest. Accordingly, we hold that the nocturnal juvenile curfew ordinance ... is constitutional.” (p. 496)

#### **ENCYCLOPEDIAS:**

- 42 AM. JUR. 2d *Infants* §19 (1969).
- Danny R. Veilleux, Annotation, *Validity, Construction, and Effect of Juvenile Curfew Regulations*, 83 A.L.R. 4<sup>th</sup> 1056 (1991).
- Eunice A. Eichelberger, Annotation, *Criminal Responsibility of Parent for Act of Child*, 12 A.L.R. 4<sup>th</sup> 673 (1982), §7 Failure to Observe Curfew.

#### **TEXTS & TREATISE:**

- 1 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §14.07 (2d. ed. 1994).
- 6A EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* §24.111 (3d ed. 1991).
- MICHAEL J. DALE ET AL., *REPRESENTING THE CHILD CLIENT* §3.02[3][e][ii] (2000).

#### **LAW REVIEWS:**

- Frank DeLucia, *Connecticut’s Juvenile Curfew Ordinances: An Effective Means for Curbing Juvenile Crime, or an Unconstitutional Deprivation of Minors’ Fundamental Rights?*, 15 QUINNIPIAC L. REV. 357 (1995).
- William L. Foreman, *The Constitutional Dilemma Over Juvenile Curfews*, 53 OKLA. L. REV. 717 (2001). *Extensive discussion of Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir 1999)
- Adam W. Poff, *A Tale of Two Curfews (and one city): what do two Washington D.C. juvenile curfews say about constitutional interpretations of District of Columbia courts and the confusion over juvenile curfews everywhere?* 46 VILL. L. REV. 277 (Feb. 2001).
- Brant K. Brown, Note, *Scrutinizing Juvenile Curfews: Constitutional Standards & the Fundamental Rights of Juveniles & Parents*, 53 VAND. L. REV. 653 (2000).
- Jordan C. Budd, *Juvenile Curfews: The Rights of Minors vs. the Rhetoric of Public Safety*, 26 HUMAN RIGHTS, Fall 1999, at 22.
- Note, *Juvenile Curfews and Gang Violence: Exciled on Main Street*, 107 HARV. L. REV. 1693 (1994).
- Note, *Assessing the Scope of Minors’ Fundamental Rights: Juvenile Curfews and the Constitution*, 97 HARV. L. REV. 1163 (1984).
- Alexander K. Marketos, *The Constitutionality of Juvenile Curfews*, 46 Juv. &



- FAM. CT. L. J., Spring 1995, at 17. [available at the Norwich Law Library]
- Gregory Z. Chen, *Youth Curfews and the Trilogy of Parent, Child, and State Relations*, 72 N.Y.U. L. REV. 131 (1997).
  - Robert E. Shepherd, Jr., *The Proliferation of Juvenile Curfews*, 12 CRIM. JUST., Spring 1997, at 43.
  - Overtis Hicks Brantley & Robyn E. Blumner, *Curfews for Juveniles - Yes: Safety is Fundamental Right; No: Curfews Treat Law-abiding Teens Like Criminals*, 80 A.B.A. J., April 1994, at 40.

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## Section 1.8

# Contractual Rights of Minors

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### *A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the capacity of minors to enter into contracts and the enforceability of such contracts.
- STATUTES:** CONN. GEN. STAT. (2003)
- § 36a-297. Deposits or share accounts of minors.  
“A minor may contract to establish a deposit account with any bank or share account with any Connecticut credit union or federal credit union, and may be the owner, or a joint owner, co-owner or beneficiary of any deposit account...”
  - § 38a-284. Insurance contracts by minors.
  - § 46b-150d. Effect of emancipation.
- RESTATEMENT OF THE LAW:**
- RESTATEMENT (SECOND) OF CONTRACTS §§ 7, 12, & 14 (1981).
- COURT CASES:**  
(Connecticut)
- Riley v. Mallory, 33 Conn. 201 (1866).  
“The privilege of an infant to avoid contracts which are injurious to him, and rescind those which are not, is not an exception to a general rule, but a general rule with exceptions. The law assumes the incapacity of an infant to contract. It also recognizes the fact that ... it is indispensably necessary that an infant should be at liberty to contract for necessities; and that he may happen to make other contracts which will be beneficial to him. It does not therefore forbid him to contract, but gives him for his protection the privilege of avoiding contracts which are injurious to him and rescinding all others ... excepting from the operation of the privilege only contracts for necessities, contracts which he may be compelled in equity to execute, and executed contracts where he has enjoyed the benefit of them and can not restore the other party to his original position.” (p. 206)
  - Ennis v. Beers, 84 Conn. 610, 80 A. 772 (1911).  
“Even when an infant agrees to pay a stipulated price for necessities, he is not bound to pay the price stipulated in the contract, and the person furnishing them can recover only the fair and reasonable value of such necessities.” (p. 612-613)
  - Wells v. Radville, 112 Conn. 459, 153 A. 154 (1931).  
“The contract implied by the [Workers’] Compensation Act, that both parties agree to accept its benefits and be bound thereby in lieu of any other remedy, being a contract implied by the law or the mutual protection and benefit of both, there seems no logical reason why a minor should not be bound and

subject to this implied contract just as much as a person of full age and *sui juris*.” (p. 465)

- Blancato v. Feldspar Corporation, 203 Conn. 34, 522 A.2d 1235 (1987). Estate of a minor who was illegally employed may bring a suit for wrongful death despite the exclusive remedy provision of the Workers’ Compensation Act. “...we limit this power of election with respect to employment contracts to minors who had been illegally employed.” (p. 41-42)
- Saccavino v. Gambardella, 22 Conn. Supp. 167, 164 A.2d 304 (1960). “The infancy of the defendant son should be pleaded as a defense if relied upon, rather than as a ground of demurrer.” (p. 169)
- Addario v. Sandquist, Superior Court, judicial district of New Haven at New Haven, Docket No. CV-96-0391759S (March 25, 1998). Minor allowed to rescind a sales contract and recover the full purchase price of an automobile plus interest.
- Goodrow v. Bates, Superior Court, judicial district of Danbury, Docket No. 295634 (May 8, 1992). “The clear impact of Blancato is that the plaintiff has an election of remedies, either to affirm the illegal employment contract and accept workers’ compensation benefits, or to reject it and bring a common law tort action... This is a clear situation of election of remedies and ratification of the illegal employment contract.”

#### **FORMS:**

- 9B AM. JUR. LEGAL FORMS 2D §§ 144:21-144:70 (1996).
- 14 AM. JUR. PLEADING AND PRACTICE FORMS §§ 143-181 (1996).  
§ 143 “Complaint, petition, or declaration—of infant suing by guardian ad litem—Rescission of contract for purchase of non-necessaries—Return of consideration”  
§ 149 “Answer—Defense—Ratification of contract by infant”  
§ 162 “Answer of infant by guardian ad litem—Contract for non-necessaries”

#### **ENCYCLOPEDIAS:**

- 42 AM. JUR. 2d *Infants* §§ 58-139 (1969).
- 43 C.J.S. *Infants* §§ 166-188 (1978).
- A. D. Kaufman, Annotation, *Infant’s Misrepresentation as to His Age as Estopping Him From Disaffirming His Voidable Transaction*, 29 A.L.R. 3d 1270 (1970).
- Annotation, *Infant’s Liability for Services Rendered by Attorney at Law Under Contract With Him*, 13 A.L.R. 3d 1251 (1967).

#### **TEXTS & TREATISE:**

- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 10.01-10.06 (2d ed., 1994).
- 5 SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS §§ 9:1-9:25 (4<sup>th</sup> ed. 1993).
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT § 3.03 (2000).
- JOHN D. CALAMARI & JOSEPH M. PERILLO, THE LAW OF CONTRACTS §§ 8.1-8.9 (2d ed., 1977).

#### **LAW REVIEWS:**

- Paul S. Lazorick, *Obligations for Family Debts*, 44 CONN. BAR J. 236, 242 (1970).

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# Section 1.9

## Medical Treatment for Minors

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*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to the rights of minors to consent to confidential medical treatment including abortions.

**STATUTES:**

CONN. GEN. STAT. (2003)

- § 1-1d Age of Majority-Defined.
- § 17a-1 Definitions. "As used in sections 17a-1 to 17a-26, inclusive, 17a-28 to 17a-49, inclusive, 17a-127 and 46b-120,..."
- § 17a-4a Children's Behavioral Health Advisory Committee. Membership.
- § 17a-6 Powers and duties of commissioner (*Dept. of Children & Families*)  
    "(e) Insure that all children under the commissioner's supervision have ... adequate medical, dental, psychiatric, psychological, ... services."
- § 17a-81 Parental consent necessary for treatment. Exceptions. (*Dept. of Children & Families, Commitment of Mentally Ill Children*)
- § 17a-101f Exam by physician - diagnostic tests and procedures to detect child abuse.
- § 17a-688(d) "If the person seeking treatment or rehabilitation for alcohol dependence or drug dependence is a minor, the fact that the minor sought such treatment or rehabilitation or that the minor is receiving such treatment or rehabilitation, shall not be reported or disclosed to the parents or legal guardian of the minor without the minor's consent. The minor may give legal consent to receipt of such treatment and rehabilitation. A minor shall be personally liable for all costs and expenses for alcohol and drug dependency treatment afforded to the minor at the minor's request under section 17a-682."
- § 19a-14c Provision of outpatient mental health treatment to minors without parental consent.
- § 19a-216 Examination and treatment of minor for venereal disease. Confidentiality. Liability for costs.
- § 19a-285 Consent by minor to medical, dental or hospital services for child.
- § 19a-285a Donation of blood by minors.
- § 19a-582 Informed consent for testing. Exceptions (*HIV testing*)  
    (a) "... The consent of a parent or guardian shall not be a prerequisite to testing of a minor."
- § 19a-592 Testing and treatment of minor for HIV or AIDS. Confidentiality. Liability for costs.
- § 19a-601 Information and counseling for minors required. Medical emergency exception.
- § 45a-604(5) 'Guardianship' means guardianship of the person of a minor,

and includes: (A) the obligation of care and control; (B) the authority to make major decisions affecting the minor's education and welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment;..."

- § 45a-606 Father and mother joint guardians.
- § 46b-150 Emancipated Minor - at least 16 years old.

#### **REGULATIONS:**

CONN. AGENCIES REGS. (1987)

Public Health Code §19-13-D3(d)(8) "...except in emergency situations, the responsible physician shall obtain proper informed consent as a prerequisite to any procedure or treatment for which it is appropriate."

#### **LEGISLATIVE:**

- JOHN KASPRAK, MEDICAL TREATMENT FOR MINORS, Office of Legislative Research [Report No. 95-R-0617](#) (March 22, 1995).
- JOHN KASPRAK, REFUSAL OF MEDICAL TREATMENT ON RELIGIOUS GROUNDS, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH [Report No. 99-R-0180](#) (February 3, 1999).

#### **CASES:**

- H.L. v. Matheson, 450 U.S. 398, 67 L.Ed. 2d 388, 101 S.Ct. 1164 (1981). "The question presented in this case is whether a state statute which requires a physician to 'notify, if possible,' the parents of a dependent, unmarried minor girl prior to performing an abortion on the girl violates federal constitutional guarantees" (1166).
- Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L.Ed. 2d 344 (1990). The Supreme Court "held that requirement that both parents be notified of minor's abortion decision did not reasonably further any legislative state interest and was unconstitutional. The court further held ... that provision of statute which requires two parent notification unless pregnant minor obtains judicial bypass was constitutional."
- Ruby v. Massey, 452 F.Supp. 361 (D. Conn. 1978)  
*Can parents give consent to sterilization of retarded/handicapped children in lieu of childrens' consent?*

#### **FORMS:**

- 13C AM. JUR. LEGAL FORMS 2d *Parent and Child* §§ 191:29—191:45 (2002).  
§ 191:30 Consent of Parent-Medical Treatment for minor.  
§ 191:31 Consent of Parent-Surgery for minor.  
§§ 191:34, 191:35 Parental authorization for emergency medical treatment for minor-to school.  
§ 191: 33 Authorization to consent to medical and dental treatment for minor - to adult nonparent.  
§ 191:37 Consent of minor living separate and apart from parents or legal guardian-for hospital and medical care.  
§ 191:45 Consent by unmarried pregnant minor-for hospital, medical, and surgical care.  
§ 191:42 Consent of emancipated minor – diagnosis and treatment of venereal disease.
- 15 AM. JUR. LEGAL FORMS 2d *Physicians and Surgeons* § 202:99 Statement of need for therapeutic abortion – American Medical Association form (2000).

**KEY #:**

- Parent & Child 2(1)
- Physician & Surgeons 15(15)

**ENCYCLOPEDIAS:**

- 59 AM. JUR. 2d *Parent and Child* § 71 (2002).
- William H. Danne, Annotation, *Validity, Construction, and Application of statutes Requiring Parental Notification of or consent to Minor's Abortion*, 77 A.L.R. 5<sup>th</sup> 1 (2000).
- Lisa K. Gregory, Annotation, *Propriety of Surgically Invading Incompetent or Minor for Benefit of Third Party*, 4 A.L.R. 5<sup>th</sup> 1000 (1992).
- Danny R. Veilleux, Annotation, *Medical Practitioner's Liability for Treatment Given Child Without Parent's Consent*, 67 A.L.R. 4<sup>th</sup> 511 (1989).
- John D. Hodson, Annotation, *Infant's Liability for Medical, Dental or Hospital Services*, 53 A.L.R. 4<sup>th</sup> 1249 (1987).
- Angela R. Holder, *Circumstances Warranting Court-Ordered Medical Treatment of Minors*, 24 AM. JUR. P.O.F. 2d 169 (1980).

**TEXTS & TREATISE:**

- FAY A. ROZOVSKY, *CONSENT TO MEDICAL TREATMENT: A PRACTICAL GUIDE* Ch. 5 (2d ed., 1990).
- MICHAEL J. DALE ET AL., *REPRESENTING THE CHILD CLIENT* §3.02[2][c] (2000).
- PAUL R. KFOURY, *CHILDREN BEFORE THE COURT: REFLECTIONS ON LEGAL ISSUES AFFECTING MINORS* 133-161 (2d ed., 1991).
- 1 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §§ 14.13-14.18 (2d ed., 1994)

**LAW REVIEWS:**

- Joseph P. Wood, *Informed Consent to the Medical Treatment of Minors: Law and Practice*, 10 HEALTH MATRIX 141 (Sum. 2000).
- Christine M. Hanisco, *Informed Consent: Does the First Amendment Protect a Patient's Right to Choose Alternative Treatment?*, 16 N.Y. L. SCH. J. HUM. RTS. 933 (2000).
- Shoshanna Ehrlich, *Journey Through the Courts: Minors, Abortion and the Quest for Reproductive Fairness*, 10 YALE J. L. & FEMINISM 1 (1998).
- Catherine Grevers Schmidt, *Where Privacy Fails: Equal Protection and the Abortion Rights of Minors*, 68 N.Y.U. L. REV. 597 (1993).
- Janine P. Felsman, *Eliminating Parental Consent And Notification For Adolescent HIV testing: A Legitimate Statutory Response to the AIDS Epidemic*, 5 JOURNAL OF LAW AND POLICY 339 (1996).
- Note, *The Minor's Right to Abortion and the Requirement of Parental Consent*, 60 VA. L. REV. 305 (1974).

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# Section 1.10

## Employment Rights of Minors in Connecticut

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*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to the rights of minors in the workplace.

**STATUTES:**

CONN. GEN. STAT. (2003)

- § 10-193 Certificate of age for minors in certain occupations.
- § 10-194 Penalty  
“Any person ... who employs any minor under the age of eighteen at any occupation described in subsection (a) of section 10-193 without having obtained a certificate as provided therein shall be fined not more than one hundred dollars.”
- § 10-197 Penalty for employment of child under fourteen.
- § 31-12 Hours of labor of minor ... in manufacturing or mechanical establishments.
- § 31-13 Hours of labor of minor ... in mercantile establishments.
- § 31-14 Night work of minors regulated.
- § 31-15 *Penalties for violating the provisions of §§31-12 to 31-14.*
- § 31-16 Night work in messenger service.
- § 31-18 Hours of labor of minors ... in certain other establishments.
- § 31-23 Employment of minors prohibited in certain occupations.  
Exceptions.
- § 31-24 Hazardous employment of children forbidden. Penalty.
- § 31-25 Operation of elevators by minors.

UNITED STATES CODE

- 29 U.S.C.A. § 203(l) (West 1998). “Oppressive child labor” defined
- 29 U.S.C.A. § 212 (West 1998). Child labor provisions
- 41 U.S.C.A. § 35(c) (West Supp. 2003).

**REGULATIONS:**

- CONN. AGENCIES REGS. §31-23-1 (1976).  
*Includes a list of jobs declared hazardous by the Connecticut State Department of Labor*
- §29 C.F.R. Part 570 (2000).

**LEGISLATIVE:**

- LYNN MARX, EMPLOYING FOREIGN MINORS, Connecticut General Assembly, Office of Legislative Research, [Report No. 2001-R-0271](#) (Mar. 15, 2001).

**COURT CASES:**  
(Connecticut)

- Blancato v. Feldspar Corporation, 203 Conn. 34, 522 A.2d 1235 (1987).  
Estate of a minor who was illegally employed may bring a suit for wrongful death despite the exclusive remedy provision of the Workers’ Compensation

Act. "...we limit this power of election with respect to employment contracts to minors who had been illegally employed." (p. 41-42)

- Grant v. Bassman, 221 Conn. 465, 604 A.2d 814 (1992).
- Goodrow v. Bates, Superior Court, judicial district of Danbury, Docket No. 295634 (May 8, 1992).  
"The clear impact of Blancato is that the plaintiff has an election of remedies, either to affirm the illegal employment contract and accept workers' compensation benefits, or to reject it and bring a common law tort action... This is a clear situation of election of remedies and ratification of the illegal employment contract."

**FORMS:**

- 9A AM. JUR. LEGAL FORMS 2D §132:49 (1995)  
*Guaranty by parents—Performance of minor's obligations under employment contract—Letter form*

**ENCYCLOPEDIAS:**

- 30 C.J.S. *Employers' Liability* §§ 33, 44, 45, 46 (1992).
- Allan L. Schwartz, Annotation, *Validity, Construction, Application, and Effect of Child Labor Provisions of Fair Labor Standards Act (29 U.S.C.S. §212 and Related Sections)*, 21 A.L.R. Fed. 391 (1974).
- Annotation, *Workers' Compensation Statute as Barring Illegally Employed Minor's Tort Action*, 77 A.L.R. 4<sup>th</sup> 844 (1990).
- Frank D. Wagner, Annotation, *Lawn Mowing by Minors as Violation of Child Labor Statutes*, 56 A.L.R. 3d 1166 (1974).

**TEXTS & TREATISE:**

- CHECKLIST FOR THE EMPLOYMENT OF MINORS IN THE STATE OF CONNECTICUT, CONNECTICUT DEPT. OF LABOR WAGE & WORKPLACE STANDARDS DIVISION. URL: <http://www.ctdol.state.ct.us>.
- THE CONNECTICUT EMPLOYERS' GUIDE TO HIRING STUDENTS IN SCHOOL-TO-CAREER PROGRAMS, CONNECTICUT DEPT. OF LABOR AND CONNECTICUT BUSINESS & INDUSTRY ASSOC. URL: <http://www.ctdol.state.ct.us/youth/main.htm>
- JEFFREY L. HIRSCH, *LABOR AND EMPLOYMENT IN CONNECTICUT: A GUIDE TO EMPLOYMENT LAWS, REGULATIONS AND PRACTICES* §1-8 (2000).
- 1 PERSONNEL MANAGEMENT SERVICES, *WHAT TO DO ABOUT PERSONNEL PROBLEMS IN CONNECTICUT* C-5 (2000).
- 2 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §§ 19.01-19.15 (2d ed., 1994).
- MICHAEL J. DALE ET AL., *REPRESENTING THE CHILD CLIENT* §3.03[2][a] (2000).
- MARK A. ROTHSTEIN ET AL., *EMPLOYMENT LAW*, §4.7 (Practitioner Treatise Series, 1994).

**LAW REVIEWS:**

- Jeremy S. Sosin, *The Price of Killing a Child: Is the Fair Labor Standards Act Strong Enough to Protect Children in Today's Workplace?* 31 VAL. U. L. REV. 1181 (1997).

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# Representing Minors in Connecticut

*A Guide to Resources in the Law Library*

## Definitions:

- “The term **Guardian ad litem** shall mean a person appointed by the court during any proceeding in which a minor child, undetermined or unborn or class of such person, or a person whose identity or address is unknown, or an incompetent person is a party, to represent and protect the interests of such parties.” CONNECTICUT PROBATE PRACTICE BOOK, Rule 1.1.09.
- “The primary role of any **counsel for the child** including the counsel who also serves as **guardian ad litem**, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child’s wishes or position and that which counsel for the child believes in in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The **guardian ad litem** shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children.” CONN. GEN. STAT. § 46B-129a(2)
- “Typically, the **child’s attorney** is an advocate for the child, while the **guardian ad litem** is the representative of the child’s best interests.” *Newman v. Newman*, 235 Conn. 82, 96, 663 A.2d 980 (1995)
- “... the **attorney for the child** is just that, an *attorney* arguing on behalf of his or her client, based on the evidence in the case and the applicable law.” *Ireland v. Ireland*, 246 Conn. 413, 438, 717 A.2d 986 (1998)
- “The term ‘**child’s attorney**’ means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.” *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, Standards for the Child’s Attorney A-1* (American Bar Association, 1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 843 (2d ed., 2001).
- “A lawyer appointed as ‘**guardian ad litem**’ for a child is an officer of the court appointed to protect the child’s interests without being bound by the child’s expressed preferences.” *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, Standards for the Child’s Attorney A-2* (American Bar Association, 1996), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 843 (2d ed., 2001).

## Sections in this chapter:

- § 2.1 GUARDIAN AD LITEM IN CONNECTICUT ..... **ERROR! BOOKMARK NOT DEFINED.**
- § 2.2 ATTORNEY FOR THE MINOR CHILD..... **ERROR! BOOKMARK NOT DEFINED.**
- § 2.3 REMOVAL OF A GUARDIAN AD LITEM OR ATTORNEY FOR THE MINOR CHILD.....**ERROR! BOOKMARK NOT DEFINED**

# Section 2.1

## Guardian Ad Litem in Connecticut

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*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to the role of the guardian ad litem including circumstances warranting appointment, termination or removal, and the distinction between the role of a guardian ad litem and that of an attorney.

**DEFINITION:**

“The term **Guardian ad litem** shall mean a person appointed by the court during any proceeding in which a minor child, undetermined or unborn or class of such person, a person whose identity or address is unknown, or an incompetent person is a party, to represent and protect the interests of such parties.” CONNECTICUT PROBATE PRACTICE BOOK Rule 1.1.09.

**STATUTES:**

CONN. GEN. STAT. (2003)

- § 45a-132 Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons.
- § 45a-620 Appointment of counsel. Appointment of Guardian ad litem to speak on behalf of best interests of minor. (*Probate Court*)
- § 45a-621 Appointment of guardian ad litem.  
“The Court of Probate shall appoint a guardian ad litem to make any application under sections 45a-603 to 45a-622, inclusive, to represent or appear on behalf of any parent who is less than eighteen years of age or incompetent.”
- § 45a-708 Guardian ad litem for minor or incompetent parent.  
(a) When, with respect to any petition for termination of parental rights ... it appears that either parent of the child is a minor or incompetent, the court shall appoint a guardian ad litem for such parent.”
- § 46b-47 Complaint for dissolution of marriage on ground of confinement for mental illness; procedure  
(b)“ If the conservator does not appear in court, or if the adverse party has no conservator, the court shall appoint a guardian ad litem for the adverse party.”
- § 46b-54 Counsel for minor children. Duties.
- § 46b-129a Examination by physician. Appointment of counsel and guardian ad litem.  
“The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf

of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.

## **REGULATIONS:**

- CODE OF FEDERAL REGULATIONS  
45 C.F.R. § 1340.14(g) (2002) Guardian ad litem.  
“In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child.”

## **COURT RULES**

- CONNECTICUT PROBATE PRACTICE BOOK (4<sup>th</sup> ed., 1996)
  - Rule 3.5 Appointment of guardian ad litem in conservator proceedings
  - Rule 4 Guardians ad litem—including cause for appointment, duties,...
- CONNECTICUT PRACTICE BOOK (2003)
  - § 25-62 Appointment of Guardian Ad Litem (*Family cases*)
  - § 44-20 Appointment of Guardian Ad Litem
    - (a) In any criminal proceeding involving an abused or neglected minor child, a guardian ad litem shall be appointed. The judicial authority may also appoint a guardian ad litem for a minor involved in any other criminal proceedings...”

## **LEGISLATIVE REPORTS:**

- PAMELA LUCAS, GUARDIANS AD LITEM AND COUNSEL IN CUSTODY CASES, Connecticut General Assembly, Office of Legislative Research, [Report No. 97-R-0290](#) (Feb. 21, 1997).
- LAWRENCE K. FURBISH, GUARDIAN AD LITEM IN NEGLECT AND ABUSE CASES, Connecticut General Assembly, Office of Legislative Research, [Report No. 98-R-0648](#) (April 23, 1998).

## **FORMS:**

- 2 CONNECTICUT PRACTICE BOOK Form 106.16 (1978).  
Motion for appointment of guardian ad litem
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT App. 3F (1987).  
“Petition of Minor Plaintiff for Appointment of Guardian Ad Litem; Acceptance; and Order of Court” ( 3-138)

## **CASES:**

- In re Tayquon H., 76 Conn. App. 693, 821 A.2d 796 (2003).  
“On the basis of those allied decisions and amplified by our understanding of the fundamental role of a guardian ad litem, we believe that as between a guardian ad litem and a natural guardian, the presumption should be that the court-appointed guardian ad litem is the proper person to speak for the child for the purposes of the litigation, barring a showing that he or she cannot properly fulfill the guardian ad litem role and that another is better suited to the role.” (710)  
“It also is clear ... that the obligation of the person appointed as counsel is

shaped by the Rules of Professional Conduct, which, in pertinent part, obligate counsel to abide by a client's decisions concerning the objectives of representation... It is when counsel perceives that this obligation is in conflict with the child's actual best interest that counsel must bring that to the courts' attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child's best interest in the process." (703)

- Schult v. Schult, 241 Conn. 767, 699 A.2d 134 (1997).  
 "... we conclude, that where the court has appointed both an attorney and a guardian ad litem to represent a child in a dissolution action, the attorney for the child may advocate a position different from that of the guardian ad litem so long as the trial court determines that it is in the best interests of the child to permit such dual, conflicting advocacy." (780)
- Newman v. Newman, 235 Conn. 82, 663 A.2d 980 (1995).  
 "Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child's present wishes, the contrary course of action would be in the child's long term best interests, psychologically or financially." (96-97)
- Orsi v. Senatore, 230 Conn. 459, 645 A.2d 986 (1994).  
*The appropriateness of the foster parent representing the minor as a next friend when both a guardian and a guardian ad litem have already been appointed.*
- Ridgeway v. Ridgeway, 180 Conn. 533, 429 A.2d 801 (1980).  
 "Under General Statutes §46b-54, the court 'may' appoint counsel to protect the interests of a minor child in a dissolution action if it deems it to be in the best interests of the children. The term 'may' imports discretion..."
- Cottrell v. Connecticut Bank & Trust, 175 Conn. 257, 398 A.2d 307 (1978).  
*An appeal may be brought by a next friend when the guardian ad litem refuses to appeal*
- Potter v. Alcorn, 140 Conn. 96, 99 A.2d 97 (1953)  
 The probate court has the "power to appoint a guardian ad litem in any proceeding in which the minor's interest would be affected, whether the interest was pecuniary or not". The probate court has the power to "make allowance" to the guardian ad litem to compensate him for his services.

#### **STANDARDS:**

- *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (A.B.A., 1996), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 843 (2d ed., 2001).
- *Standards of Practice for Lawyers Representing Children in Custody Cases* (Approved by the ABA House of Delegates, August 2003), reprinted in 37 FAM. L. QUART. 131 (2003).

#### **KEY NUMBER:**

- West Key Numbers: Infants # 76 et seq.

#### **ENCYCLOPEDIAS:**

- 42 AM. JUR. 2d *Infants* §§ 158—201 (2000) *Representation of Infant*.  
 § 183 *Guardian Ad Litem*
- 43 C.J.S. *Infants* §§222-242 (1978).
- Carol A. Crocca, Annotation, *Propriety and Prejudicial Effect of Third Party Accompanying or Rendering Support to Witness During Testimony*, 82 A.L.R. 4<sup>th</sup> 1038, § 7 (1990).
- Susan L. Thomas, Annotation, *Liability of Guardian Ad Litem for Infant*

*Party to Civil Suit for Negligence in Connection with Suit*, 14 A.L.R. 5<sup>th</sup> 929 (1993).

**TEXTS & TREATISES:**

- FAMILY LAW PRACTICE IN CONNECTICUT 7-26, Law Practice Handbooks (1996).
- ANN M. HARALAMBIE, *THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES* (1993) Guardians Ad Litem, p. 5-10  
Selected Guidelines for Guardian Ad Litem, Appendix B, p. 239.  
Excerpt, D. WHITCOMB, *GUARDIANS AD LITEMS IN THE CRIMINAL COURTS* (1988), Appendix C, p. 289.
- 2 SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* Ch. 12A (2003).
- 1 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §§ 12.01-12.07 (1994).
- ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* (1993).  
§ 4.24 Independent Representation for the Child [Dependency and Neglect Proceedings]  
§§ 11.23-11.24 Independent Representation for the Child [Custody Incident to Dissolution of Marriage]  
§§ 21.04-21.05 Trial Techniques
- MICHAEL J. DALE ET AL., *REPRESENTING THE CHILD CLIENT* (1987).  
§4.06[1][a] Guardian Ad Litem - Dependency Proceedings  
§9.02[5] Guardian Ad Litem distinguished from the role of an attorney

**ARTICLES:**

- Frederic S. Ury, et al., *A Law Primer for Risky Behavior in Minors*, CONN. LAW., November 2003, at 12.
- Linda D. Elrod, *Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases*, 37 FAM. L. QUART. 105 (2003).
- Robert Solomon, *Staying in Role: Representing Children in Dependency and Neglect Cases*, 70 CONN. B.J. 258 (1996).
- Edward Sokolnicki, *Attorney as Guardian Ad Litem for a Child in Connecticut*, 5 CONN. PROB. L.J. 237 (1991).
- Wilhelm, Hemenze & Fowler, *The Role of the Guardian Ad Litem in Probate Proceedings*, 65 CONN. B.J. 462 (1991).
- Richard Ducote, *Guardians Ad Litem in Private Custody Litigation: The case for Abolition*, 3 LOY. J. PUB. INT. L. 106 (2002).
- Judge Chester T. Harhut, *An Expanded Role for the Guardian Ad Litem*, 51 JUV. & FAM. CT. J., Summer 2000, at 31.
- *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 43 (1996), reprinted in JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* 787 (1997).
- Jean Koh Peters, *The Roles and content of Best Interest in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 FORDHAM L. REV. 1505 (1996), reprinted in JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* 483 (1997).
- Sarah H. Ramsey, *Representation of the Child in Protection Proceedings: The Determination of Decision-Making Capacity*, 17 FAM. L.Q. 287 (1983).
- Roy T. Stuckey, *Guardians Ad Litem as Surrogate Parents: Implications for Role Definition and Confidentiality*, 64 FORDHAM L. REV. 1785 (1996).
- H. Lila Hubert, *In the Child's Best Interests: The Role of the Guardian Ad*

*Litem in Termination of Parental Rights Proceedings*, 49 U. MIAMI L. REV. 531 (1994).

- Catherine M. Brooks, *When a Child Needs a Lawyer*, 23 CREIGHTON L. REV. 757 (1990). (“This essay speaks to that lawyer who has just received a first-time appointment as a guardian ad litem to represent a child.”)
- Rebecca H. Hartz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, 27 FAM. L.Q. 327 (1993).
- Janice & Fred Morganroth, *Why Winging it Won’t Work: Know Your Role as Guardian Ad Litem or Mediator. Otherwise You May Succumb to Malpractice*, 13 FAMILY ADVOCATE, Spring 1991, at 44.
- John H. Lightfoot, Jr., *Children’s Rights, Lawyers Roles: Are the Duties of a Guardian Ad Litem the Same as an Advocate for the Child? Yes. No. Maybe*, 10 FAMILY ADVOCATE, Winter 1988, at 4.

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## Section 2.2

# Attorney for the Minor Child

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the role of the attorney for a minor child in legal proceedings and how this role differs from that of the guardian ad litem.

### **STATUTES**

CONN. GEN. STAT. (2003)

- § 45a-620 Appointment of counsel. Appointment of Guardian ad litem to speak on behalf of best interests of minor. (*Probate Court*).
- § 46b-54 Counsel for minor children. Duties.
- § 46b-62 Orders for payment of attorney's fees in certain actions.
- § 46b-129a Examination by physician. Appointment of counsel and guardian ad litem.

"The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.

### **COURT RULES**

CONNECTICUT PRACTICE BOOK (2003 ed.)

- § 25-24 *Motion for appointment of counsel for minor child.*
- § 30-3 *Advisement of Rights (juvenile matters).*
- § 32a-1 *Right to Counsel and to Remain Silent (juvenile matters).*

### **RULES OF PROFESSIONAL CONDUCT:**

- CONNECTICUT PRACTICE BOOK (2003)

Rule 1.14 Client under a Disability

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority ... or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

### **FORMS:**

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 163 (1991)  
Form VIII-A-3 "Motion for Appointment of Counsel for Minor Children"
- LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, GETTING A LAWYER APPOINTED FOR YOUR CHILD: DIVORCE, CUSTODY OR VISITATION

CASES (2000).

“Motion for Appointment of Counsel for Minor Children”

**CASES:**

- In re Tayquon H., 76 Conn. App. 693, 821 A.2d 796 (2003).  
“It also is clear ... that the obligation of the person appointed as counsel is shaped by the Rules of Professional Conduct, which, in pertinent part, obligate counsel to abide by a client’s decisions concerning the objectives of representation... It is when counsel perceives that this obligation is in conflict with the child’s actual best interest that counsel must bring that to the courts’ attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child’s best interest in the process.” (703)
- Ireland v. Ireland, 246 Conn. 413, 717 A.2d 676 (1998).  
“... the attorney for the child is just that, an *attorney*, arguing on behalf of his or her client, based on the evidence in the case and the applicable law. The attorney is not, however, a witness, whether quasi-expert or otherwise. Thus, an attorney for a minor child shall be heard in a similar manner as most other attorneys are heard, ...” (438-439)
- Newman v. Newman, 235 Conn. 82, 663 A.2d 980 (1995).  
“Typically, the child’s attorney is an advocate for the child, while the guardian ad litem is the representative of the child’s best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child’s present wishes, the contrary course of action would be in the child’s long term best interests, psychologically or financially.” (96-97)
- Schaffer v. Schaffer, 187 Conn. 224, 445 A.2d 589 (1982)  
“The purpose of appointing counsel for a minor child in a dissolution action is to ensure independent representation of the child’s interest and such representation must be entrusted to the professional judgment of appointed counsel within the usual constraints applicable to such representation.” (p.224 n.1)
- Schult v. Schult, 241 Conn. 767, 699 A.2d 134 (1997).  
“... we conclude, that where the court has appointed both an attorney and a guardian ad litem to represent a child in a dissolution action, the attorney for the child may advocate a position different from that of the guardian ad litem so long as the trial court determines that it is in the best interests of the child to permit such dual, conflicting advocacy.” (p. 780)
- G.S. v. T.S., 23 Conn. App. 509, 582 A.2d 467 (1990).  
“In this case, where custody is hotly contested, where, prior to trial, the court is made aware of allegations of child abuse and sexual molestation, ... it is an abuse of discretion not to appoint counsel for the minor children.” (p. 516)
- Weinstein v. Weinstein, 18 Conn. App. 622, 561 A.2d 443 (1989).  
“No authority is given to court appointed counsel to issue orders affecting the parties or their children or to resolve, in quasijudicial fashion, disputes between the parties concerning their children.” (p. 628)
- Ridgeway v. Ridgeway, 180 Conn. 533, 429 A.2d 801 (1980).  
“Under General Statutes §46b-54. the court ‘may’ appoint counsel to protect the interests of a minor child in a dissolution action if it deems it to be in the best interests of the children. The term ‘may’ imports discretion...”

**STANDARDS:**

- *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (A.B.A., 1996), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 843 (2d ed., 2001).



- *Standards of Practice for Lawyers Representing Children in Custody Cases* (Approved by the ABA House of Delegates, August 2003), reprinted in 37 FAM. L. QUART. 131 (2003).

#### **ENCYCLOPEDIAS:**

- 42 AM. JUR. 2d *Infants* §§ 158—201(2000). *Representation of Infant*
- Christopher Bello, Annotation, *Validity and Efficacy of Minor's Waiver of Right to Counsel—Modern Cases*, 25 A.L.R. 4<sup>th</sup> 1072 (1983).

#### **CLE SEMINARS:**

Available at the  
Norwich Law Library

- CONNECTICUT BAR ASSOCIATION, ADVANCED AND COMPLEX ISSUES IN JUVENILE LAW (CLE Seminar, Dec. 13, 1996).
- CONNECTICUT BAR ASSOCIATION, REPRESENTING PARENTS OR CHILDREN IN TERMINATION OF PARENTAL RIGHTS CASES (CLE Seminar, Oct. 6, 1993).

#### **TEXTS & TREATISES:**

- LAW PRACTICE HANDBOOKS, FAMILY LAW PRACTICE IN CONNECTICUT\_ Ch. 7, at 7-25 (1996).
- LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, GETTING A LAWYER APPOINTED FOR YOUR CHILD: DIVORCE, CUSTODY OR VISITATION CASES (2000).
- ANN. M HARALAMBIE, THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES (1993).
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT (1987).
- JOHN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (1997).
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE Ch. 12A (2003).
- ANN M. HARALAMBIE, CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO CUSTODY AND TORT ACTIONS 279-296 (1999).
- ANNE GRAFFAM WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (1999).

#### **LAW REVIEWS:**

- Frederic S. Ury, et al., *A Law Primer for Risky Behavior in Minors*, CONN. LAW., November 2003, at 12.
- Linda D. Elrod, *Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases*, 37 FAM. L. QUART. 105 (2003).
- Robert Solomon, *Staying in Role: Representing Children in Dependency and Neglect Cases*, 70 CONN. B.J. 258 (1996).
- Connecticut Bar Association, *Counsel for Children: Guidelines for Courts and Counsel in Civil Custody Cases*, 56 CONN. B.J. 484 (1982).
- Kim J. Landsman & Martha L. Minow, Note, *Lawyering for the Child: Principles of Representation in Custody and Visitation Disputes Arising from Divorce*, 87 YALE L.J. 1126 (1978).
- Carolyn Richter & Gina A. Pasquini, *The Role of the Counsel for the Minor Child: Minority Report*, 6 CONN. FAM. LAW. 37 (1991).
- *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 43 (1996), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 883 (2d ed., 2001).
- Ann M Haralambie, *Representing Children in Civil Cases*, 30 TRIAL, no. 2, 37 (Feb. 1994).
- Jean Koh Peters, *The Roles and content of Best Interest in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 FORDHAM L. REV. 1505 (1996), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL

DIMENSIONS 559 (2d ed., 2001).

- Nancy W. Perry and Larry L. Teply, *Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys*, 18 CREIGHTON L. REV. 1369 (1985), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 665 (2d ed., 2001).
- Angela D. Lurie, *Representing the Child-Client: Kids are People too; an Analysis of the Role of Legal Counsel to a Minor*, 11 N.Y. L. SCH. J. HUM. RTS. 205 (1993).
- Judith Larsen, *Does the Child's Lawyer Owe "The Whole Truth" to the Court in Neglect-Abuse Cases?*, 47 JUV. & FAM. CT. J., Spring 1996, at 49.
- Sarah H. Ramsey, *Representation of the Child in Protection Proceedings: The Determination of Decision-Making Capacity*, 17 FAM. L.Q. 287 (1983).

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## Section 2.3

# Removal of a Guardian Ad Litem or Attorney for the Minor Child

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to the removal of a guardian ad litem or attorney for the minor child, and standing to seek removal of a guardian ad litem or attorney for the minor child.

### **STATUTES**

CONN. GEN. STAT. (2003)

- § 45a-132 Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons.  
(f) The guardian ad litem may be removed by the judge or magistrate which appointed him, without notice, whenever it appears to the judge or magistrate to be in the best interests of the ward or wards of the guardian.
- § 46b-129a Examination by physician. Appointment of counsel and guardian ad litem.  
(2) "...The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.

### **COURT RULES**

CONNECTICUT PRACTICE BOOK (2003 ed.)

- § 25-62 Appointment of Guardian Ad Litem (*family matters*)
- § 44-20 Appointment of Guardian Ad Litem (*criminal case*)

### **WEST KEY NUMBERS:**

Standing to seek removal

- *Infants* # 82
- *Constitutional Law* # 42.2(1)

### **CASES:**

- Taff v. Bettcher, 35 Conn. App. 421, 646 A.2d 875 (1994).  
“Our case law is also clear that a person cannot gain standing by asserting the due process rights possessed by another individual.” (p. 425)  
“We must next determine whether a parent, who certainly has legal duties with respect to her child, can dictate how the best interests of her child should be legally represented in a court proceeding. We conclude that she cannot.” (p. 426)
- Strobel v. Strobel, 64 Conn. App. 614, 620, 781 A.2d 356 (2001), *cert. denied*, 258 Conn. 937 (2001).  
“The defendant did not claim that her request was made to prevent prejudice to her own case... The defendant, therefore, has no standing to pursue her claim that the court improperly denied her motion to disqualify her child’s counsel. *See Taff v. Bettcher*, supra, 428.”
- Lord v. Lord, 44 Conn. App. 370, 375, 689 A.2d 509 (1997), *cert. denied*, 241 Conn. 913 (1997), *cert. denied*, 522 U.S. 1122 (1998).  
“The defendant has no standing to raise a claim on behalf of the minor child, who is represented by a court-appointed attorney to protect the child’s best interest. The defendant’s motion to dismiss the attorney appointed by the court to represent the child claimed that the attorney negligently and incompetently represented the minor child. The defendant did not claim, nor did he demonstrate to the trial court, that his request was made to prevent prejudice to his own case.”
- Wilkinson v. Weigand, No. FA92-51785 (Conn. Super. Ct., Hartford, July 10, 1999). “The statutory scheme for the appointment of guardians ad litem in family, juvenile (and probate) matters does not include any provision for another party, including the parent, to challenge the individual who is appointed to that position... In the context of these considerations, the court finds that the *Taff* standard for standing has not been met ... and that she lacks standing to assert the termination of Ms. Benedict’s appointment as either attorney for the children or guardian ad litem for the children.”
- Nixon v. Nixon, No. FA94-048415S (Conn. Super. Ct., Milford, March 10, 1998). “To remove an attorney for a cminor child because the attorney in previous cases has taken an adverse position in a matter on way or the other would create a chilling effect on attorneys and the cases they could take on for clients.”

### **TEXTS & TREATISES:**

- JOHN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (1997).

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# Chapter 3

# Child Abuse and Neglect in Connecticut

*A Guide to Resources in the Law Library*

- **Abused** “means that a child or youth (A) has had physical injury or injuries inflicted upon him other than by accidental means, or (B) has injuries which are at variance with the history given of them, or (C) is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment;” CONN. GEN. STATS. § 46b-120(4) (2003)
- “A child or youth may be found ‘**neglected**’ who (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being, or (D) has been abused;” CONN. GEN. STATS. § 46b-120(9) (2003)
- **Child abuse and neglect** “means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by a person who is responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary;” 42 U.S.C. § 5106g(4) [see also 45 CFR §1340.2(d)]
- “‘**Person responsible for the health, welfare or care of a child or youth**’ means a child’s or a youth’s parent, guardian or foster parent; an employee of a public or private residential home, agency or institution or other person legally responsible in a residential setting; or any staff person providing out-of-home care, including center-based child day care, family day care or group day care, as defined in section 19a-77.” CONN. GEN. STATS. § 17a-93(l) (2003)
- “‘**Person entrusted with the care of a child of youth**’ means a person given access to a child or youth by a person responsible for the health, welfare or care of a child or youth for the purpose of providing education, child care, counseling, spiritual guidance, coaching, training, instruction, tutoring or mentoring of such child or youth.” Conn. Gen. Stats. § 17a-93(o), *amended by* 2002 CONN. ACTS. 138 (Reg. Sess.) § 11.

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## Internet Resources:

Connecticut Department of Children and Families: <http://www.state.ct.us/dcf/>  
Connecticut Office of the Child Advocate <http://www.oca.state.ct.us>  
The Children's Law Center of Connecticut <http://www.clcct.org>  
Prevent Child Abuse Connecticut  
[http://www.volunteersolutions.org/uwcact/volunteer/agency/one\\_170788.html](http://www.volunteersolutions.org/uwcact/volunteer/agency/one_170788.html)  
Clearinghouse on Child Abuse & Neglect: <http://www.calib.com/nccanch/>  
Child Welfare League of America : <http://www.cwla.org>  
Children's Defense Fund: <http://www.childrensdefense.org/>  
Pew Commission on Children in Foster Care: <http://www.pewfostercare.org>  
Administration for Children and Families: <http://www.acf.dhhs.gov/>

## Section 3.1

# Duty to Report Child Abuse

*A Guide to Resources in the Law Library*

**See 2003 Conn. Acts 168, Sec. 6 & 7 (Reg. Sess.)** for amendments to Conn. Gen. Stat. §§ 17a-101c & 17a-101i. *Effective July 1, 2003*

**SCOPE:** Bibliographic resources relating to the duty to report suspected child abuse to the proper authorities.

**STATUTES:** CONN. GEN. STAT. (2003)

- § 10-149a Felony conviction or fine pursuant to mandated reporting provisions. Notification by state's attorney.
- § 17a-93 Definitions
- § 17a-101 Protection of children from abuse. Mandated reporters. Training program for identification and reporting of child abuse and neglect.
- § 17a-101a Report of abuse or neglect by mandated reporter. Penalty for failure to report.
- § 17a-101b Oral report by mandated reporter to Commissioner of Children and Families or law enforcement agency.
- § 17a-101c Written report by mandated reporter.
- § 17a-101d Contents of oral and written reports.
- § 17a-101e Employers prohibited from discrimination against witness in child abuse proceedings ... Immunity for making report of child abuse in good faith. False report of child abuse. Penalty.
- § 17a-103 Reports by others. False reports. Notification to law enforcement agency.
- § 17a-103a Telephone hotline to receive reports of child abuse.
- § 46a-131 Child Advocate's duties. Child fatality review panel. Reports to the Governor and the General Assembly. Investigations.

**FEDERAL STATUTES:** UNITED STATES CODE

- 42 U.S.C.A. §§ 5101—5106i (West Supp. 2002) Child Abuse Prevention and Treatment  
§ 5106a Grants for States for child abuse and neglect prevention and treatment programs. Eligibility requirements.  
(see § 5106a(b)(2)(A)(i) for provision related to reporting procedures)
- 25 U.S.C.A. §§ 3201—3211 (West 2001) Indian Child Protection and Family Violence Prevention Act.  
§ 3203 Reporting Procedures.
- MASHANTUCKET PEQUOT TRIBAL LAWS tit. 2, ch. 5, §§ 1-3 (2001).  
Child Neglect and Abuse Reporting

## **LEGISLATIVE**

- Sandra Norman-Eady, [Mandated Reporter Law](#), Connecticut General Assembly. Office of Legislative Research Report No. 2002-R-0528 (June 6, 2002).

## **STATE REGULATIONS:**

- CONN. AGENCIES REGS. §§ 17a-101-1—17a-101(e)-6 (1994)
  - § 17a-101(e)-1 Scope of regulations.
  - § 17a-101(e)-2 Definitions.
  - § 17a-101(e)-3 Reports of child abuse or neglect.
  - § 17a-101(e)-4 Investigation of reports of child abuse or neglect by the department.
  - § 17a-101(e)-5 Notification of law enforcement agencies – removal of child from home – child to remain in own home.
  - § 17a-101(e)-6 Termination of protective services.
- CONN. AGENCIES REGS. § 19a-87b-10(j)(3) (2000)

The provider shall report actual or suspected child abuse or neglect of any child to the nearest office of the Department of Children and Families as mandated by Section 17a-101 and 17a-102 of the Connecticut General Statutes.
- CONN. AGENCIES REGS. § 10-145g-1 (1996) Reports of Child Abuse by a Certified School Employee.

## **FEDERAL REGULATIONS:**

- CODE OF FEDERAL REGULATIONS (2002)
  - 45 C.F.R. § 1340.14 Eligibility requirements.
  - (c) *Reporting*. The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

## **FORMS:**

- [DCF-136 Report of Suspected Child Abuse / Neglect](#)

## **COURT CASES:** (Connecticut)

- *Morales v. Kagel*, 58 Conn. App. 776, 783, 755 A.2d 915 (2000). “... we conclude that the defendant in this case did not owe a duty to the plaintiff to investigate the accusations against him prior to making a good faith report.”
- *Ward v. Greene*, 31 Conn. L. Rptr. 458 (New London Super. Ct., Feb. 21, 2002), 2002 WL 377922. “There is no appellate case law on the precise issue of whether a violation of section 17a-100 of the General Statutes ... creates a private right of action... The underlying purpose of this legislation is not to create unlimited liability to a non-reporter with an indirect or nonexistent relationship to a victim of child abuse.”
- *Greco v. Anderson*, Docket No. CV00-0501458S (New Britain Super. Ct., Oct. 23, 2000), , 2000 WL 1763732. “Extending immunity to false and malicious accusations, if that is what they were, would not serve the public purpose of discovering child abuse and would compromise the constitutional protection accorded to family autonomy. The Grecos have pled sufficient facts to bring this case within the ‘bad faith’ exception to the immunity afforded mandated reporters by the statute.”
- *Anderson v. Department of Public Health*, Docket No. CV99-0494513S (New Britain Super. Ct., Dec. 20, 1999), 1999 WL 1288935.

*An appeal from a decision of the Department of Public Health to revoke plaintiff’s family daycare license for failure to comply with state laws concerning mandated reporting of suspicions of child abuse and neglect. Appeal dismissed.*



- Doe v. Vibert, Docket No. CV97-048332S (New Britain Super. Ct., July 12, 1999), 1999 WL 545746. "...plaintiff has alleged that defendant Wartonick was negligent for failing to report to the Board of Education her stated suspicion of defendant's ... misconduct toward the plaintiff... This court concludes that the plaintiffs' complaint states a viable cause of action for negligence per se in that the plaintiffs allege the violation of a statute and plead facts sufficient to allege a causal link between the statutory violation and the alleged injury."
- Parker v. Nelson, 19 Conn. L. Rptr. 616 (Norwich Super. Ct., June 16, 1997), 1997 WL 345617. "The plaintiffs' complaint alleges that Nelson violated § 17a-101a by failing to report the instances of alleged child abuse communicated to her... This court concludes that the plaintiffs' complaint states a viable cause of action for negligence per se in that the plaintiffs' allege the violation of a statute and plead facts sufficient to allege a causal link between the statutory violation and the alleged injury."

**WEST KEY  
NUMBERS:**

- *Infants* # 13.5

**ENCYCLOPEDIAS:**

- Danny R. Veilleux, Annotation, *Validity, Construction, and Application of State Statute Requiring Doctor or Other Person to Report Child Abuse*, 73 A.L.R. 4th 782 (1989).
- Jimmie E. Tinsley, *Failure to Report Suspected Case of Child Abuse*, 6 AM. JUR. P.O.F. 2d 345 (1975).
- Thomas L. Gowen & Richard J. Kohlman, *Professional Liability for Failure to Report Child Abuse*, 38 AM. JUR. TRIALS 1 (1989).

**TEXTS &  
TREATISES:**

- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT*, 23-31 (1997).
- THOMAS B. MOONEY, *A PRACTICAL GUIDE TO CONNECTICUT SCHOOL LAW* 342 (2d ed., 2000).
- 2 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §§ 16.14-16.20 (2d ed. 1994).
- ANN M. HARALAMBIE, *CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO CUSTODY AND TORT ACTIONS* (1999).
- INGER J. SAGATUN & LEONARD P. EDWARDS, *CHILD ABUSE AND THE LEGAL SYSTEM* 36 (1995).
- LEONARD KARP & CHERYL L. KARP, *DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT & SEXUAL ABUSE*, §10.03 (1989).
- SANDRA MORGAN LITTLE, *CHILD CUSTODY AND VISITATION LAW & PRACTICE*, §31.03 (2000).

**LAW REVIEWS:**

- Ronald Bard, *Connecticut's Child Abuse Law*, 48 CONN. BAR J. 260 (1974)
- Douglas J. Besharov, *Child Abuse and Neglect: Liability for Failure to Report*, 22 TRIAL, August 1986, at 67.
- Howard Davidson, *Reporting Suspicions of Child Abuse: What Must a Family Lawyer Do?* 17 FAM. ADVOC., Winter 1995, at 50.
- Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 FAM. L. Q. 141 (1986).

**HOTLINE:**

- Connecticut Department of Children and Families  
Child Abuse & Neglect Hotline: 1-800-842-2288, TD: 1-800-624-5518  
(Spanish speaking staff is available)

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## Section 3.2

# Investigations and Proceedings in Child Abuse and Neglect Cases

*A Guide to Resources in the Law Library*

### **2003 Conn. Public Acts**

**See 2003 Conn. Acts 168, Sec. 6 & 7 (Reg. Sess.)** for amendments to Conn. Gen. Stat. §§ 17a-101c & 17a-101i. *Effective July 1, 2003.*

### **2003 Conn. Acts 243(Reg. Sess.) An Act Concerning Interstate Placement of Children and Visitation for Children in the Care and Custody of the Commissioner of Children and Families and Child Placement Criminal History Records Checks.**

See Section 5 of this act for new provisions regarding children separated from parents and siblings due to DCF intervention, and the duty of DCF to ensure “that a child placed in the care and custody of the commissioner pursuant to an order of temporary custody or an order of commitment is provided visitation with such child’s parents and siblings, unless otherwise ordered by the court.”

**See 2003 Conn. Acts 168, Sec. 6 & 7 (Reg. Sess.)** for amendments to Conn. Gen. Stat. §§ 17a-101c & 17a-101i. *Effective July 1, 2003*

### **SCOPE:**

Bibliographic resources relating to the investigation and prosecution of allegations of child abuse and/or child neglect.

### **STATUTES:**

CONN. GEN. STATUTES (2003)

- § 10-145b(m)(2) *Revocation of Education Certificate*
- § 10-149a Felony conviction of fine pursuant to mandated reporting provisions. Notification of state’s attorney.
- § 17a-28 Confidentiality of and access to records [access to DCF records pertaining to investigations of abuse or neglect]
- § 17a-47 Legal division re child abuse and neglect [assistant attorneys general responsible for prosecuting neglect petitions]
- § 17a-100 Ill treatment of children. [children in foster care]
- § 17a-101f Examination by physician. Diagnostic tests ... to detect child abuse.
- § 17a-101g Classification and evaluation of reports. Home visit. Removal of child in imminent risk of harm.
- § 17a-101h Coordination of investigatory activities. Interview with child.

Consent.

- § 17a-101i Abuse of child by school employee. Suspension...
- § 17a-101j Notification of Chief State's Attorney ...
- § 17a-101k Registry of reports maintained by Commissioner of Children and Families...
- § 17a-103b Notice to parent or guardian of substantiated complaint of child abuse.
- § 17a-105 Temporary custody of abused child upon arrest of parent of guardian.
- § 17a-105a Child abuse and neglect unit within Division of State Police to assist investigation of child abuse and neglect.
- § 17a-106 Cooperation in relation to ... investigation of child abuse and neglect.
- § 17a-106b Impact of family violence in child abuse cases.
- § 17a-110 Permanency planning for children ... Procedure after commitment hearing.
- § 17a-111a Commissioner of Children and Families to file petition to terminate parental rights, when.
- § 17a-111b Commissioner of Children and Families may petition court re reasonable efforts to reunify parent with child. Determination by court.
- §§ 45a-607 to 45a-625 *Removal and appointment of guardians of a minor in Probate Court*
  - § 45a-619 Investigation by Commissioner of children and Families.
  - § 45a-623 Transfer of contested proceeding to Superior Court or another judge of probate.
- §§ 46a-13k to 46a-13q Office of the Child Advocate.
- § 46b-121 "Juvenile matters" defined. Authority of court.
  - (a) Juvenile matters in the civil session include all proceedings concerning uncared-for, neglected or dependent children and youth within this state, termination of parental rights of children committed to a state agency,..."
- § 46b-129 Commitment of child or youth. Petition for neglected, uncared-for, dependent child or youth. Hearing re temporary custody, order to appear or petition. Review of permanency plan. Revocation or commitment.
- § 46b-129a Examination by physician. Appointment of counsel and guardian ad litem.
- § 53-20 Cruelty to persons.
- § 53-21 Injury or risk of injury to, or impairing morals of, children.
- § 53a-71 Sexual assault in the second degree: Class C felony: nine months not suspendable.
- § 53a-73a Sexual assault in the fourth degree: Class A misdemeanor.

**FEDERAL  
STATUTES:**

UNITED STATES CODE

- 25 U.S.C.A. §§ 3201 to 3211 (West 2001) Indian Child Protection and Family Violence Prevention
- 42 U.S.C.A. § 5106c (West Supp. 2003) Grants to states for programs relating to investigation and prosecution of child abuse and neglect cases.
- MASHANTUCKET PEQUOT TRIBAL LAWS tit. 5, ch. 3, § 1 (2002).

**CONNECTICUT  
REGULATIONS:**

- CONN. AGENCIES REGS. §§ 17a-101-1 to 17a-101-13 (1994).
  - § 17a-101-4 Investigation of reports received.
  - § 17a-101-12 Circumstances requiring immediate removal.

- § 17a-101-13 Procedures for immediate removal.
- CONN. AGENCIES REGS. §§ 17a-101(e)-3 to 17a-101(e)-6 (1994).  
§ 17a-101(e)-4 Investigations of reports of child abuse or neglect by the department.  
§ 17a-101(e)-5 Notification of law enforcement agencies—removal of child from home—child to remain in own home.
- CONN. AGENCIES REGS. § 17a-145-54 (1994) Causes for revoking or refusing to renew license.
- CONN. AGENCIES REGS. § 10-145g-1 (1996) Reports of child abuse by a certified school employee.
- CONN. AGENCIES REGS. § 19a-87b-14 (1996) Complaint investigations (Family Day Care Homes)  
(b) Confidentiality of child abuse and/or neglect investigations.  
(c) Duty to investigate  
(d) Unannounced home visits; Notice and interview.  
(f) Complaints referred to Department of Children and Families.

### **FEDERAL REGULATIONS:**

CODE OF FEDERAL REGULATIONS (2002)

- 45 C.F.R. § 1340.14(d) Investigations.  
“The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect ...”

### **COURT RULES:**

[Connecticut Practice Book](#) (2003 Edition)

- Chap. 32a Rights of Parties, Neglected, Uncared for and Dependent Children and Termination of Parental Rights.
- Chap. 33a Petitions for Neglect, Uncared for, Dependency and Termination of Parental Rights: Initiation of Proceedings, Orders of Temporary Custody and Preliminary Hearings.
- Chap. 34a Pleadings, Motions and Discovery...
- Chap. 35a Hearings Concerning Neglected, Uncared for and Dependent Children and Termination of Parental Rights.

### **COURT CASES:** (Connecticut)

- DeShaney v. Winnebago County Department of Social Services, 489 U.S. 998, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989).
- Shay v. Rossi, 253 Conn. 134, 180, 749 A.2d 1147 (2000). “The totality of these facts, if proven, would permit a fact finder to infer that the defendants filed the neglect and abuse petitions knowing that they were unjustified, and continued them with that knowledge,... and that they did so ... to justify their prior unjustified actions... We are constrained to conclude that the factually supported allegations are serious enough to warrant the conclusion that the defendants are not shielded by the doctrine of sovereign immunity.”
- Doe v. Connecticut Department of Children and Youth Services, 712 F.Supp. 277 (1989), *aff’d*, 911 F.2d 868 (1990). *DCF workers entitled to “qualified immunity” from liability.*
- Williams v. Hauser, 948 F.Supp. 164 (D. Conn. 1996). *DCF workers not entitled to “absolute prosecutorial immunity”.*
- In re Brian D. and Shannon D., Juvenile Matters at New Haven, April 27, 1999, 5 Conn. Ops. 582 (May 24, 1999).  
*Foster parents’ motion to intervene in an abuse and neglect action brought by DCF ; motion denied.*

***Cases Discussing the doctrine of ‘Predictive Neglect’***

- In re Michael D., 58 Conn. App. 119, 123-124, 752 A.2d 1135 (2000), *cert. denied* 254 Conn. 911 (2000). “By its terms, § 17a-101(a) connotes a responsibility on the state’s behalf to act before the actual occurrence of injury or neglect has taken place... Our statutes clearly and explicitly recognize the state’s authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected.”
- In re Kelly S., 29 Conn. App. 600, 613, 616 A.2d 1161 (1992). “The trial court found that the respondent was not capable of providing the necessary care. The evidence fully supports that conclusion... Actual incidents of abuse or neglect are not required in determining that a child is uncared for under the ‘specialized needs’ section of the statute... For purposes of commitment of a child to the custody of the commissioner pursuant to § 46b-129, proof of ongoing parenting deficiencies is sufficient to satisfy the statute where those deficiencies mean that the child’s home is unable to provide the care required for her special needs.”
- In re Chloe P., (Conn. Super. Ct., Middletown, Oct. 31, 2001).
- In re Corey-Thomas, (Conn. Super. Ct., Torrington, Sept. 20, 2000). “Two of the cases cited by petitioner aptly describe the nature of an necessity for the doctrine of predictive neglect.”

**WEST KEY  
NUMBERS:**

- *Infants # 15*
- **Predictive Neglect - *Infants # 156***

**CLE SEMINARS**

- *Advanced and Complex Issues in Juvenile Law* (Conn. Bar Assoc. Seminar, Dec. 13, 1996).
- *Juvenile Law* (Conn. Bar Assoc. Seminar, Oct. 1994).
- *Representing Parents or Children in Termination of Parental Rights Cases* (Conn. Bar Assoc., Oct. 6, 1993).

**TEXTS &  
TREATISE:**

- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT*, (1997).
- LYNN B. COCHRANE & JILL DAVIES, *FAMILY PROBLEMS, DCF, AND THE LAW: A GUIDE FOR PARENTS*, Greater Hartford Legal Assistance (2001).
- SAMUEL M. DAVIS, *RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM*, §§ 5A.1-5A.9 (2d ed. 2000)
- ANN M. HARALAMBIE, *CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO CUSTODY AND TORT ACTIONS 18-29* (1999).
  - §1-1 Appendix: *The Investigation of Child Sexual Abuse: An International, Interdisciplinary Consensus Statement*.
  - “The report is designed to guide state and local officials, professionals, and advocates seeking to investigate child sexual abuse” (19).
- INGER J. SAGATUN & LEONARD P. EDWARDS, *CHILD ABUSE AND THE LEGAL SYSTEM* (1995).
  - Roles of Child Protective Services, p. 38.
  - Role of Law Enforcement Agencies, p. 43.
  - The Legal Response to Child Abuse, p. 65
- LEONARD KARP & CHERYL L. KARP, *DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT & SEXUAL ABUSE*, §§ 8.11 to 8.15 (1989).
  - § 8.11 Establishing a §1983 Claim Against Governmental Agencies and School Districts for Failure to Report Abuse (includes information

on liability for failure to adequately investigate)

§ 8.14A Violations of Civil Rights (1983 Claim) for Removing and Holding Children Pending Investigation.

§ 8.14B Unnecessarily Intrusive Investigations by Protective Agencies

§ 8.15 Negligent Supervision or Abuse Prevention of Abused Child

- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 16.18 to 16.33 (2d ed. 1994).
  - § 16.18 The Child Protection System
  - § 16.19 Consequences of Failure to Investigate Allegations of Child Abuse
  - § 16.20 Central Registries & Child Protective Service Records
  - §§ 16.23-16.33 Judicial Intervention
- 1 JOHN E. B. MEYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT CASES ch. 1 (3<sup>rd</sup> ed. 1997).
- KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (2001).

#### **LAW REVIEWS:**

- Eric B. Martin, *Maintaining Sibling Relationships for Children Removed from Their Parents*, CHILDREN'S LEGAL RTS. J., Winter 2002-2003, at 47.
- National Association of Counsel for Children, *Recommendations for Representation of Children in Abuse and Neglect Cases*, CHILDREN'S LEGAL RTS. J., Winter 2001-2002, at 36.
- Peter J. Schmiedel, Charles P. Golbert & Adrienne Giorgolo, *Rights of Abused and Neglected Children to Safe and Adequate Foster Care under the Guarantees of the Fourteenth Amendment*, CHILDREN'S LEGAL RTS. J., Summer 2000, at 14.
- Howard Davidson, *The Legal Aspects of Corporal Punishment in the Home: When Does Physical Discipline Cross the Line to Become Child Abuse?*, CHILDREN'S LEGAL RTS. J., Fall 1997, at 18.
- Dyanne C. Greer, *Child Abuse and Discipline: A Parental and Prosecutorial Dilemma*, CHILDREN'S LEGAL RTS. J., Fall 1997, at 30.
- Michael R. Beeman, *Investigating Child abuse: the Fourth Amendment and Investigatory Home Visits*, 89 COL. L. REV. 1034 (1989).
- Allen F. Anderson, *Commentary on Nursing Mothers, Drugs, and the Limits of the Criminal Process*, 48 JUV. & FAM. CT. J., Winter 1997, at 53.
- Amy Sinden, *In Search of Affirmative Duties Toward Children Under a Post -Deshaney Constitution*, 39 UNIV. PA. L. REV. 227 (1990).
- Michael E. Lamb, *The Investigation of Child Sexual Abuse: An International, Interdisciplinary Consensus Statement*, 28 FAM. L. Q. 151 (1994).
- Douglas J. Gesharov, *Combating Child Abuse: Guidelines for Cooperation between Law Enforcement and Child Protective Agencies*, 24 FAM. L. Q. 209 (1990).

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## Section 3.3

# Immediate Removal of Child

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to circumstances which warrant the immediate removal of a child from his or her home environment and the procedures for removal.

### **STATUTES:**

CONN. GEN. STAT. (2003)

- §17a-101f Examination by physician. Diagnostic tests and procedures to detect child abuse.  
“Any physician examining a child with respect to whom abuse or neglect is suspected shall have the right to keep such child in the custody of a hospital for no longer than ninety-six hours in order to perform diagnostic tests and procedures necessary to the detection of child abuse ... with or without the consent of such child’s parents or guardian ...”
- §17a-101g(c) & (d) Removal of child in imminent risk of harm
- §17a-105 Temporary custody of abused child upon arrest of parent or guardian.
- §17a-113 Custody of child pending application for removal of guardian or termination of parental rights; enforcement by warrant.
- §45a-607 Temporary custody of minor pending application to probate court for removal of guardian or termination of parental rights. [ex parte orders]
- § 45a-609 Application for removal of parent as guardian. Hearing. Notice...
- § 45a-610 Removal of parent as guardian.
- §46b-129(b) Commitment of child or youth. Petition for neglected, uncared-for, dependent child or youth.

MASHANTUCKET PEQUOT TRIBAL LAWS tit. 5, ch. 3, §§ 3-4 (2002).

### **REGULATIONS**

CONN. AGENCIES REGS. (1994)

- §17a-101-12 Circumstances for immediate removal (96-Hour Hold)  
“Under the following circumstances, the Commissioner in accordance with Section 17a-101-13 may immediately remove a child from his surroundings for a period not to exceed 96-hours.
- §17a-101-13 Procedures for immediate removal.
- §17a-101(e)-5 Notification of law enforcement agencies - removal of child from the home - child to remain in own home.

### **COURT RULES:**

[Connecticut Practice Book](#) (2003 Edition).

- § 33a-6 Order of Temporary Custody; Ex Parte Orders and Orders to Appear.
- § 33a-7 Preliminary Hearings
- § 33a-8 Emergency, Life-Threatening Medical Situations – Procedures.

### **FORMS:**

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE



CONNECTICUT FAMILY LAWYER 145-150 (1991)  
Form No. VII-A-6a *Application for Ex parte Temporary Injunction.*

**COURT CASES:**  
(Connecticut)

- Tenenbaum v. Williams, 193 F.3d 581, 596 (2d Cir. 1999), *U.S. cert. denied* 529 U.S. 1098, 120 S.Ct. 1832 (2000). “Because we now hold that it is unconstitutional for a state official to effect a child’s removal on an ‘emergency’ basis where there is reasonable time safely to obtain judicial authorization consistent with the child’s safety, caseworkers can no longer claim, as did the defendants here, that they are immune from liability for such actions because the law is not ‘clearly established.’”
- Pamela B. v. Ment, 244 Conn. 296, 299, 709 A.2d 1089 (1998). “The plaintiff... brought this action ... seeking a declaratory judgment ... and injunctive relief on behalf of herself and a class of persons consisting of all parents in the state whose children have been or may be seized by the state department of children and families, and who have been or may be denied their statutory and consitutional right to challenge the state’s temporary custody in a timely evidentiary hearing.”
- Williams v. Hauser, 948 F. Supp. 164 (D. Conn. 1996). *Mother brought action against DCF social workers and four police officers alleging they violated her rights when they secured a court order to obtain custody of her children.*  
“... the motion to dismiss based on absolute immunity is denied. Qualified immunity sufficiently protects the interests of DCF employees and ensures the right balance between an efficient judicial process and the responsible removal of children” (167).
- Doe v. Connecticut Department of Children and Youth Services, 712 Fed. Supp. 277 (D. Conn. 1989), affirmed 911 F.2d 868 (1990). “Civil rights action was brought agains state child welfare officials arising out of emergency removal and temporary custody of child based on allegations of child abuse.”

**TEXTS & TREATISE:**

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT , 35-43 (1997).
- Arthur E. Webster, Child Protection in Connecticut Courts: Basic Practice and Procedure, *in* JUVENILE LAW 7 (Connecticut Bar Association Seminar Manual, October 1994).

**LAW REVIEWS:**

- Eliot R. Clauss, *Ex Parte Order in Child Abuse Cases: Minimizing Judicial Process Trauma*, 4 CONN. FAM. LAW., Winter 1989, at 38.

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# Section 3.4

## Child Witnesses in Connecticut

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### *A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to the vulnerability of child witnesses and the reliability of child testimony.
- CONSTITUTION:**
- U.S. Const. amend. VI.
  - Conn. Const. art. I, § 8.
- STATUTES:**
- CONN. GEN. STATUTES (2003)
- § 1-25 *Oath for witnesses 12 years of age or younger*
  - § 46b-49 Private hearing.
  - § 46b-138a Testimony of accused juvenile, parent or guardian in juvenile proceedings.
  - § 54-86g Testimony of victim of child abuse.
  - § 54-86h Competency of child as witness.
- UNITES STATES CODE ANNOTATED
- 18 U.S.C.A. § 3509 Child victims and child witnesses' rights (West 2000).
- COURT RULES:**
- [Connecticut Practice Book](#) (2003 Edition)
    - § 25-59 Closed Hearings and Records.
    - § 32a-1 Right to Counsel and to Remain Silent.
    - § 32a-4 Child Witness (*juvenile matters*).
- CASES:**
- [Globe Newspaper Co. v. Superior Court](#), 457 U.S. 596, 102 S.Ct. 2613 (1982).

This case addresses the constitutionality of a Massachusetts statute which, "as construed by the Massachusetts Supreme Judicial Court, requires trial judges, at trials for specified sexual offenses involving a victim under the age of 18, to exclude the press and general public from the courtroom during the testimony of that victim." (p. 598)

Held: "... § 16A, as construed by the Massachusetts Supreme Judicial Court, violates the First Amendment to the Constitution." (p. 610-611)
  - [State v. Bronson](#), 258 Conn. 42, 50, 779 A.2d 95 (2001). "In the exercise of discretion, the trial court must conduct an assessment of the victim's reliability as a witness pursuant to the test set forth in *Jarzbek* ... We conclude that the defendant's request for an expert's assessment should have been granted."
  - [State v. Aponte](#), 249 Conn. 735, 738 A.2d 117 (1999)

"We conclude that the actions of the prosecutor in giving the victim a Barney doll prior to her testifying, along with the trial court's limitations on the

defendant's ability to expose to the jury the impact that such conduct may have had on her testimony, harmfully deprived the defendant of due process..."(737).

"This four year old's inability to immediately 'shift gears' does not demonstrate a lack of comprehension such that her testimony should have been disallowed" (760).

- State v. Jarzbek, 204 Conn. 683, 704, 529 A.2d 1245 (1987), *cert. denied*, 484 U.S. 1061, 108 S.Ct. 1017, 98 L.Ed.2d 982 (1989)  
"We conclude that, in criminal prosecutions involving the alleged sexual abuse of children of tender years, the practice of videotaping the testimony of a minor victim outside the physical presence of the defendant is, in appropriate circumstances, constitutionally permissible... We ... mandate a cases-by-case analysis, whereby a trial court must balance the individual defendant's right of confrontation against the interest of the state in obtaining reliable testimony from the particular minor victim in question... Under the approach we adopt today, a trial court must determine, at an evidentiary hearing, whether the state has demonstrated a compelling need for excluding the defendant from the witness room during the videotaping of a minor victim's testimony."
- State v. James, 211 Conn. 555, 560 A.2d 426 (1989).  
"We conclude that the trial court did not abuse its discretion in refusing the defendant's request to charge upon the credibility of a child witness." (p. 571)
- State v. Angel, 237 Conn. 321, 677 A.2d 912 (1996).  
"The defendant in this case has similarly failed to establish that the trial court's refusal to grant his request for a child credibility instruction constituted an abuse of discretion." (p. 331)
- State v. Marquis, 241 Conn. 823, 699 A.2d 893 (1997).  
"The issue in this certified appeal is whether a trial court has the discretion, under *State v. Jarzbek*, ... and General Statutes § 54-86g, to order that a child witness be examined by an expert witness for the defense before deciding whether to grant the state's motion for videotaped testimony pursuant to § 54-86g(a). We conclude that the trial court has the discretion to order such an examination ..." (p. 824-825)

#### **WEST KEY NUMBERS:**

- *Witnesses* 39, 40(1,2), 45(2)

#### **ENCYCLOPEDIAS:**

- 81 AM. JUR. 2d *Witnesses* §§ 210-224 (1992).
- 97 C.J.S. *Witnesses* §§ 58, 63 (1957).
- Brent G. Filbert, Annotation, *Admissibility of Expert Testimony as to Proper Techniques for Interviewing Children or Evaluating Techniques Employed in Particular Cases*, 87 ALR5th 693 (2001).
- Scott M. Smith, Annotation, *Validity, Construction, and Application of Child Victims' and Child Witnesses' Rights Statute (18 U.S.C.S. § 3509)*, 121 A.L.R. Fed. 631 (1994).
- Carol J. Miller, Annotation, *Instructions to Jury as to Credibility of Child's Testimony in Criminal Case*, 32 ALR4th 1196 (1984).

#### **TEXTS & TREATISES:**

- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT* 79-80 (1997).
- LUCY S. MCGOUGH, *CHILD WITNESSES: FRAGILE VOICES IN THE AMERICAN LEGAL SYSTEM* (1994).
- ANN M. HARALAMBIE, *CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO*

CUSTODY AND TORT ACTIONS 317-338 (1999)

- ANNE GRIFFEN WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (1994).
- ANN. M HARALAMBIE, THE CHILD’S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES 103-133 (1993).
- 2 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).  
§§ 24.10 - 24.16 “Children’s Memory”  
§§ 24.17-24.22 “Children’s Testimony”  
§§ 21.07 “Child Witness”
- JOHN E.B. MEYERS, EVIDENCE IN CHILD ABUSE & NEGLECT CASES chs. 3 & 6 (3<sup>rd</sup> ed., 1997).
- JON’A F. MEYER, INACCURACIES IN CHILDREN’S TESTIMONY: MEMORY, SUGGESTIBILITY, OR OBEDIENCE TO AUTHORITY (1997).
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 13.01-13.14 (1994).
- MICHAEL J. DALE et al., REPRESENTING THE CHILD CLIENT §§ 7.01-7.7.09 (1987).

**LAW REVIEWS:**

- Jonathan Spodnick, *Competency of the Child Witness in Sexual Assault Cases: Examining the Constitutionality of Connecticut General Statute §54-86h*, 10 UNIV. OF BRIDGEPORT L. REV. 135 (1989).
- Kerry R. Callahan, *Protecting Child Sexual Abuse Victims in Connecticut*, 21 CONN. L. REV. 411 (1989).
- Nancy W. Perry and Larry L. Teply, *Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys*, 18 CREIGHTON L. REV. 1369 (1985), *reprinted in* JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 665 (2d ed. 2001).
- Julie A. Dale, *Ensuring Reliable Testimony From Child Witnesses in Sexual Abuse Cases: Applying Social Science Evidence to a New Fact-Finding Method*, 57 ALBANY L. REV. 187 (1993).

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# Child Abuse Prevention

*A Guide to Resources in the Law Library*

**SCOPE:**

Bibliographic resources relating to state and federal programs and activities developed to prevent child abuse and neglect

**STATUTES:**

CONN. GEN. STATUTES (2003)

- § 7-294g State and local police training programs to provide training re domestic violence, child abuse, and suicide intervention procedures
- § 17a-3 Powers and duties of the department. Master Plan. [Department of Children and Families]
- § 17a-49 Grants for programs to treat and prevent child abuse and neglect ...
- § 17a-50 Children's Trust Fund established...  
 "There is established a Children's Trust Fund the resources of which shall be used by the Department of Children and Families ... to fund programs aimed at preventing child abuse."
- § 17a-101 Protection of children from abuse. Mandated reporters. Training program for identification and reporting of child abuse and neglect.
- § 17a-106 Cooperation in relation to prevention, identification and investigation of child abuse and neglect.
- § 17a-106c Family Violence Coordinating Council. Members. Responsibilities.  
 The responsibility of the council shall include, but not be limited to: ... (2) identifying and promoting legislation, services and resources to prevent and address family violence;
- § 17a-125 Out-of-Home Placements Advisory Council.
- § 19a-4i Office of Injury Prevention.
- § 46a-13K et seq. Office of the Child Advocate

UNITED STATES CODE

- 42 U.S.C.A. §5101 et seq. (West Supp. 2003). "Child Abuse Prevention and Treatment Act"

**REGULATIONS**

- CONN. AGENCIES REGS. §§ 17a-50-1 to 17a-50-7 (1993)  
 §17a-50-1(c) "'Children's Trust Fund' means a designated account operated and maintained by the Department to provide financial support for community based child abuse prevention activities."
- 45 C.F.R Part 1340 (2002) Child abuse and neglect prevention and treatment.

**LEGISLATIVE REPORTS:**

- SAUL SPIGEL, CHILD ABUSE PREVENTION AND PUNISHMENT, Connecticut General Assembly, Office of Legislative Research, [Report No. 2002-R-0836](#) (Oct. 18, 2002).

**CASES:**

***Cases Discussing the doctrine of ‘Predictive Neglect’***

- *In re Michael D.*, 58 Conn. App. 119, 123-124, 752 A.2d 1135 (2000), *cert. denied* 254 Conn. 911 (2000). “By its terms, § 17a-101(a) connotes a responsibility on the state’s behalf to act before the actual occurrence of injury or neglect has taken place... Our statutes clearly and explicitly recognize the state’s authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected.”
- *In re Kelly S.*, 29 Conn. App. 600, 613, (1992). “The trial court found that the respondent was not capable of providing the necessary care. The evidence fully supports that conclusion... Actual incidents of abuse or neglect are not required in determining that a child is uncared for under the ‘specialized needs’ section of the statute... For purposes of commitment of a child to the custody of the commissioner pursuant to § 46b-129, proof of ongoing parenting deficiencies is sufficient to satisfy the statute where those deficiencies mean that the child’s home is unable to provide the care required for her special needs.”
- *In re Corey-Thomas*, (Conn. Super. Ct., Torrington, Sept. 20, 2000). “Two of the cases cited by petitioner aptly describe the nature of an necessity for the doctrine of predictive neglect.”

**WEST KEY NUMBERS:**

- **Predictive Neglect** - *Infants # 156*

**TREATISES:**

- 2 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §§ 17.01-17.12 (2d ed. 1994).

**LAW REVIEWS:**

- Donna J. Goldsmith, *In the Best Interests of an Indian Child: The Indian Child Welfare Act*, 53 JUVENILE AND FAMILY COURT JOURNAL, Fall 2002, at 9.
- Richard R. Fields, Book Note, *The Future of Child Protection: How to Break the Cycles of Abuse and Neglect*, 3 J.L. & FAM. STUD. 243 (2001).
- Jennifer L. Reichert, *Judges’ Group Releases Guidelines for Protecting Victims of Family Violence*, 35 TRIAL, August 1999, at 83.
- Howard A. Davidson, *Protecting America’s Children: a Challenge*, 35 TRIAL, January 1999, at 22.
- Michael S. Wald & Sophia Cohen, *Preventing Child Abuse—What Will It Take?*, 20 FAM. L. Q. 281 (1986).

# Safe Havens Act

*A Guide to Resources in the Law Library*

<b><u>SCOPE:</u></b>	Bibliographic resources relating to Connecticut's Safe Havens Act for Newborns.
<b><u>STATUTES:</u></b>	<p>CONN. GEN. STATUTES (2003)</p> <p>§ 17a-57 Designation of emergency room nursing staff to take physical custody of infant voluntarily surrendered.</p> <p>§ 17a-58 Physical custody of infant upon voluntary surrender by parent or agent. Medical history. Identification bracelet.</p> <p>§ 17a-59 Notification of custody. Assumption of care and control by commissioner.</p> <p>§ 17a-60 Reunification of parent with infant. Confidentiality of information provided designated employee.</p> <p>§ 17a-61 Public information program.</p> <p>§ 53-21(b) &amp; §53-23(b) "The act of a parent or agent leaving an infant thirty days or younger with a designated employee pursuant to section 17a-58 shall not constitute a violation of this section."</p>
<b><u>REGULATIONS</u></b>	<p>CONN. AGENCIES REGS. (1994)</p> <p>§</p>
<b><u>COURT CASES:</u></b> (Connecticut)	<ul style="list-style-type: none"> <li>• <i>In re of Olivia Doe</i>, 189 Misc. 2d 512, 733 N.Y.Supp. 2d 326 (2001). <i>After the parents left their newborn child at a 'safe haven' site, the Dept. Social Services petitioned the court to terminate parental rights and grant Social Services guardianship and custody.. The court granted the petition so as to free the child for adoption.</i></li> </ul>
<b><u>ADMINISTRATIVE AGENCIES - RESOURCES</u></b>	<ul style="list-style-type: none"> <li>• State of Connecticut, Department of Children and Families, <a href="#">"What is the Safe Havens Act for Newborns?"</a>, available on the DCF website.</li> <li>• State of Connecticut, Department of Children and Families, <a href="#">Policy Manual, § 34-12-4.</a></li> </ul>
<b><u>LAW REVIEWS:</u></b>	<ul style="list-style-type: none"> <li>• Ana L. Partida, Note, <i>The Case for "Safe Haven" Laws: choosing the Lesser of Two Evils in a Disposable Society</i>, 28 NEW ENG. J. ON CRIM &amp; CIV. CONFINEMENT 61 (2002).</li> <li>• Sarah Biehl, <i>Validating Oppression: Safe Haven Laws as Perpetuation of Society's Demonization of "Bad" Mothers</i>, CHILDREN'S LEGAL RIGHTS JOURNAL, Winter 2002-03, at 17.</li> <li>• Karen Vassilian, <i>A Band-Aid or a Solution? Child Abandonment Laws in California</i>, 32 MCGEORGE L. REV. 752 (2001).</li> <li>•</li> </ul>
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# Section 3.7

## False Allegations of Child Abuse

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*A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to false reports or false allegations of child abuse.
- STATUTES:** CONN. GEN. STATUTES (2003)
- §17a-101e(c) False reports of child abuse. Penalty.
  - §17a-103 Reports by others. False reports. Notification to law enforcement agency.
    - (a) "All oral reports of suspected child abuse or neglect shall be recorded and the person receiving the report "shall state the penalty for knowingly making a false report ..."
    - (b) "... if the commissioner or his representative suspects or knows that such person has knowingly made a false report, such identity shall be disclosed to the appropriate law enforcement agency and to the perpetrator of the alleged abuse."
  - §45a-615 False or malicious application for removal of guardian. Penalty.
- REGULATIONS** CONN. AGENCIES REGS. (1994)
- §17a-101-4(a) "...all reports that are determined to be unfounded shall be expunged.
  - §17a-101(e)-4(d) "Reports of child abuse or neglect determined to be unfounded will be expunged from the Child Abuse and Neglect Registry ..."
- LEGISLATIVE**
- PAUL SPIGEL, REMEDY FOR WRONGFUL CHILD ABUSE ALLEGATION, Connecticut General Assembly. Office of Legislative Research [Report No. 2002-R--948](#) (November 26, 2002).
- COURT CASES:** (Connecticut)
- Riedl v. Plourde, No. CV-02-0088965-S Conn. Super. Ct., Litchfield, Feb. 10, 2003). "The defendants were not mandated reporters and can not expect to receive any greater immunity than accorded to mandated reporters. In fact, any person who makes a knowingly false report of child abuse may be fined not more than \$2,000 or imprisoned not more than on year or both. It would be incongruous if the defendants were immune from civil liability in this situation. For these reasons the motion to strike is denied."
  - Greco v. Anderson, 28 Conn. L. Rptr. 605 (New Britain Super. Ct., Oct. 23, 2000), 2000 WL 1763732. "The plaintiffs ... allege that the defendant Anderson, 'made false and malicious accusations' of child abuse on their part to an employee of the state Department of Children and Families... I



conclude that a motion to strike is appropriate to raise the immunity issue. I also conclude, however, that the Grecos have pled sufficient facts which, if proven, would overcome the claim of immunity.”

- Wilkinson v. Wiegand, Docket No. FA92 0517285 (Hartford Super. Ct., Jan. 27, 1995), 1995 WL 43693. *In this dissolution of marriage case, the plaintiff husband was awarded a \$500,000 lump sum alimony payment. “Of particular note is the intolerable cruelty which the defendant has caused by subjecting the plaintiff to false allegations of sexual abuse, and the humiliation which resulted from that...”*
- Butler v. Butler, Docket No. FA90-027128S (Hartford Super. Ct., Feb. 19, 1992).

*A child custody dispute where allegations of child sexual abuse were made by the mother. The allegations were eventually found to be invalid. The parties were granted joint legal custody, and primary physical custody was given to the Plaintiff father.*

#### **TEXTS & TREATISE:**

- INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM 100 (1995).
- SANDRA MORGAN LITTLE, CHILD CUSODY AND VISITATION LAW & PRACTICE § 31.02[1][f], § 31.04[1] (2000).
- 1 JOHN E.B. MEYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT §5.5 (3<sup>rd</sup> ed. 1997)
- 2 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES §16.03 (1993).
- ANN M. HARALAMBIE, CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO CUSTODY AND TORT ACTIONS (1999) [see index references under ‘false allegations’]

#### **LAW REVIEWS:**

- Terese L. Fitzpatrick, *Innocent Until Proven Guilty: Shallow Words for the Falsely Accused in a Criminal Prosecution for Child Sexual Abuse*, 12 UNIV. BRIDG. L. REV. 175 (1991).
- Corey L. Gordon, *False Accusations of Child Abuse in Child Custody Disputes*, 4 CONN. FAM. L. J. 11 (1985).
- Richard A. Gardner, *Differentiating Between Bona fide and Fabiricated Allegations of Sexual Abuse of Children*, 5 J. AM. ACAD. MATRIM. LAW. 1 (1989).
- Curtis M. Loveless, *Sexual Abuse Allegations in Child Custody Cases—Some Practical Considerations*, 5 J. AM. ACAD. MATRIM. LAW. 47 (1989).
- Meredith Sherman Fahn, *Allegations of Child Sexual Abuse in Custody Disputes: Getting to the Truth of the Matter*, 25 FAM. L. Q. 193 (1991).
- Ann M. Haralambie, *Child Sexual Abuse: Defending the Alleged Abuser*, 17 FAM. ADVOC, Winter 1995, at 52.

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# Child Abuse and the Unborn

*A Guide to Resources in the Law Library*

## **2003 Conn. Acts 03-21 An Act Concerning Assault of a Pregnant Woman.**

(Jenny's Law)

Section 1. (NEW) (*Effective October 1, 2003*) (a) A person is guilty of assault of a pregnant woman resulting in termination of pregnancy when such person commits assault in the first degree as provided under subdivision (1) of subsection (a) of section 53a-59 of the general statutes and (1) the victim of such assault is pregnant, and (2) such assault results in the termination of pregnancy that does not result in a live birth.

(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the actor, at the time such actor engaged in the conduct constituting the offense, did not know that the victim was pregnant.

(c) Assault of a pregnant woman resulting in termination of pregnancy is a class A felony.

Approved May 12, 2003

### **SCOPE:**

Bibliographic resources relating to abuse or neglect of an unborn child and the extent to which a parent may be held accountable for prenatal injury

### **STATUTES:**

CONN. GEN. STATUTES (2003)

- §17a-710 Substance abuse treatment programs for pregnant women and their children.
- §17a-711 Task force on substance-abusing women and their children.

### **COURT CASES:** (Connecticut)

- State v. Courchesne, 262 Conn. 537, 816 A.2d 562 (2003). The defendant was convicted of the murder of both a pregnant woman and her infant. A caesarian delivery was necessary after the stabbing of the mother. The infant died 42 days after the stabbing.
- In Re Valerie D., 223 Conn. 492, 524, 613 A.2d 748 (1992). "We therefore infer from the legislative activity in 1990 and intent that § 45a-171(f)(2) does not contemplate a petition for termination of parental a petition for termination of parental rights based upon the prenatal drug use by the mother."
- In the Interest of Cesar G., Child Protection Session (Middletown Super. Ct., May 4, 2000), 1995 WL 43693. "In neither Ground F nor Ground E did the legislature provide that the conduct related to the 'other child' had to have occurred subsequent to the birth of the subject child. If it had intended that meaning, it easily could have included such language... Accordingly, the court holds that Ground F may apply to a child who was not born when the subject conduct occurred."

### **TEXTS & TREATISE:**

- INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM, 231-243 (1995).  
Chap. 14 "Fetal Abuse": The Case of Drug-Exposed Infants.

- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §16.11 (2d ed. 1994).

#### **ENCYCLOPEDIAS:**

- Mary E. Taylor, Annotation, *Parent's Use of Drugs as Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 A.L.R. 5th 534 (1994).

#### **LAW REVIEWS:**

- David A. Hollander, *In Re Valerie D.: The New Word on the Street*, 13 BRIDGEPORT L. REV. 989 (1993).
- Margeret P. Spencer, *Prosecutorial Immunity: The Response to Prenatal Drug Use*, 25 CONN. L. REV. 393 (1993).
- Tara Kole & Laura Kadetsky, *The Unborn Victims of Violence Act*, 39 HARV. L. ON LEGIS. 215 (2002).
- Michael Holzapfel, Comment, *The Rights to Live, The Right to Choose, and The Unborn Victims of Violence Act*, J. CONTEMP. HEALTH L. & POL'Y 431 (2002).
- Leslie Ayers, Note, *Is Mama a Criminal? An Analysis of Potential Criminal Liability of HIV-Infected Pregnant Women in the Context of Mandated Drug Therapy*, 50 DRAKE L. REV. 293 (2002).
- Lori Fulton, *Protective Custody of the Unborn: Involuntary Commitment of Pregnant, Substance-Abusing Mothers for the Protection of Their Unborn Children*, 21 CHILDREN'S LEGAL RTS. J., Fall 2001, at 8.
- Sandy Banks, *Crime and the Myth of the Perfect Mother*, L.A. TIMES, May 27, 2001, at E-1. (Woman convicted of killing her unborn child by smoking cocaine)
- Nancy Kubasek & Melissa Hinds, *The Communitarian Case Against Prosecutions for Prenatal Drug Abuse*, 22 WOMEN'S RIGHTS L. RTS. 1 (2000).
- Robyn M. Kaufman, *Legal Recognition of Independent Fetal Rights: The Trend Towards Criminalizing Prenatal Conduct*, 17 CHILDREN'S LEGAL RTS. J., Spring 1997, at 20.
- Timothy Lynch & Nancy Grace, *Individual Right: Is the Prosecution of 'Fetal Endangerment' Illegitimate*, 82 A.B.A. J., December 1996, at 72.
- Jessica Pearson & Nancy Thoennes, *What Happens to Pregnant Substance Abusers and Their Babies?*, 47 JUV. & FAM. CT. J., Spring 1996, at 15.
- Shona Glink, *The Prosecution of Maternal Fetal Abuse: Is This the Answer*, 1991 UNIV. ILL. L. REV. 533 (1991).
- Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right to Privacy*, 104 HARV. L. REV. 1419 (1991).
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## Section 3.9

# Adult Memories of Child Abuse

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### *A Guide to Resources in the Law Library*

- SCOPE:** Bibliographic resources relating to adult memories of child abuse or “repressed memory syndrome”
- STATUTES:** CONN. GEN. STATUTES (2003)
- § 52-577d Limitation of action for damages to minor caused by sexual abuse, exploitation or assault.
- COURT CASES:** (Connecticut)
- Borawick v. Shay, 68 F.3d 597, 606 (2d Cir. 1995), *cert. denied*, 597 U.S. 1229 (1996). “...the fact remains that the literature has not yet conclusively demonstrated that hypnosis is a consistently effective means to retrieve repressed memories of traumatic, past experiences accurately...”
  - Henderson v. Wooley, 230 Conn. 472, 486, 644 A.2d 1303 (1994). “... the parental immunity doctrine does not bar an action by a minor child against his or her parent for personal injuries arising out of sexual abuse, sexual assault or sexual exploitation.”
- ENCYCLOPEDIAS:**
- Charles S. Parnell, *Trial Report: Third Party Suit Against Therapists for Implanting False Memory of Childhood Molestation*, 57 Am. Jur. Trials 313 (1995).
  - Gregory G. Sarno, Annotation, *Emotional or Psychological ‘Blocking’ or Repression as Tolling Running of Statute of Limitations*, 11 A.L.R. 5th 588 (1993).
  - Russell G. Donaldson, Annotation, *Running of Limitations Against Action for Civil Damages for Sexual Abuse of Child*, 9 A.L.R. 5th 321 (1993).
- TEXTS & TREATISE:**
- INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM 255 (1995).
  - ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES §20.08 (1993).
  - Marc J. Ackerman, *Sexual Abuse Memories: Repressed, False, or Fabricated*, in 1995 WILEY FAMILY LAW UPDATE ch. 1 (1995).
- LAW REVIEWS:**
- Joseph A. Spadaro, *An Elusive Search for the Truth: the Admissibility of Repressed and Recovered Memories in Light of Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 30 CONN. L. REV. 1147 (1998).
  - Elaine Song, *A New Test for Painful ‘Memories’: The 2<sup>nd</sup> Circuit Lays Down the Law on Hypnosis Evidence in Sex-Abuse Cases*, 21 CONN. L. TRIB.,

November 6, 1995, at 1.

- Cheryl L. Karp, *The Repressed Memory Controversy*, 17 FAM. ADVOC., Winter 1995, at 70.
- Holly Metz, *Fact or Fantasy? the Debate Over 'Repressed Memory Syndrome' Enters the Courtroom*, 24 STUDENT LAW., December 1995, at 20.
- Cynthia Grant Bowman & Elizabeth Mertz, *What Should Courts do About Memories of Sexual Abuse? Toward a Balanced Approach*, 35 JUDGES' J., Fall 1996, at 7.
- Jacqueline Kanovitz, *Hypnotic Memories and Civil Sexual Abuse Trials*, 45 VAND. L. REV. 1185 (1992).

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# Torts of Minors in Connecticut

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**Tort:** "Breach of a statutory duty or one imposed by case law, and not by a contract, is a tort." A & S Council Oil Co., Inc. v. Saiki, 799 F. Supp. 1221, 1230 (D.D.C. 1992).

"A tort is defined to be a wrong independent of contract . . . ." Ross v. Schade, 7 Conn. Supp. 521 (1940).

"A breach of contract may be described as a material failure of performance of a duty arising under or imposed by an agreement, while a tort is a violation of a duty imposed by law, a wrong independent of contract." Wolf v. U.S., 855 F. Supp. 337, 340 (D. Kan. 1994).

**Elements of a tort:** "In general, the tort must be in the breach of a legal duty comprising three distinct elements, to-wit: (a) Existence of legal duty from defendant to plaintiff; (b) breach of that duty; and (c) the damage as a proximate result." Laclede Steel Co. v. Silas Mason Co., 67 F. Supp. 751, 759 (D. Louisiana, 1946).

"Under General Statute § 52-217, in actions for recovery of damages for injury to person or property, a minor under sixteen is entitled to have the trier of fact determine whether his violation of a statutory duty was negligence, while one sixteen years of age or older is subject to the general rule that the violation of an applicable statute is negligence per se." Moore v. Bunk, 154 Conn. 644, 648, 228 A.2d 510 (1967).

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## Section 4.1

# Tort Liability of Minors

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to tort liability of minors under Connecticut law.

### **DEFINITIONS:**

- **Exercise of due care:** "In all actions for recovery of damages for injury to person or property, in which the plaintiff or defendant was a minor under sixteen years of age at the time such cause of action arose, it shall be a question of fact to be submitted to the judge or jury to determine whether or not such minor plaintiff or minor defendant was in the exercise of due care, when there is a violation of statutory duty by such plaintiff or defendant." [Conn. Gen. Stats. § 52-217 \(2003\)](#).

- **Child of tender years:** "is not required to conform to the standard of behavior which is reasonable to expect of an adult, but his conduct is to be judged by the standard of behavior to be expected from a child of like age, intelligence and experience. A child may be so young as to be manifestly incapable of exercising any of those qualities of attention, intelligence and judgment which are necessary to enable him to perceive a risk and to realize its unreasonable character. On the other hand, it is obvious that a child who has not yet attained his majority may be as capable as an adult. The standard of conduct of such a child is that which is reasonable to expect of children of like age, intelligence and experience.

In so far as the child's capacity to realize the existence of a risk is concerned, the individual qualities of the child are taken into account. *Lutteman v. Martin*, 20 Conn. Sup. 371, 374-75, 135 A.2d 600 (1957).

### **STATUTES:**

- CONN. GEN. STATS. (2003).  
Chapter 435. Dogs and other companion animals  
[§ 22-357. Damage to person or property](#)  
Chapter 900. Court practice and procedure  
[§ 52-217. Violation of statute by minor](#)

### **FORMS:**

- 2 CONN. PRACTICE BOOK (1997).  
[FORM 804.9. Action against minor and parents for injury to another minor](#)
- 14 AM JUR PL & PR FORMS *Infants* (1996 Rev.).  
Torts §§ 191-222  
§ 201. Complaint, petition, or declaration—Against infant—  
Fraudulent misrepresentation of age inducing contract  
§ 202. Complaint, petition, or declaration—Against infant and  
parent—Negligent entrustment of weapon  
§ 203. . Complaint, petition, or declaration—Against infant and  
parent—Negligent entrustment of weapon—Alternate form

**JURY**  
**INSTRUCTIONS:**

- DOUGLASS B. WRIGHT AND WILLIAM L. ANKERMAN, CONNECTICUT JURY INSTRUCTIONS (CIVIL) (4<sup>th</sup> ed. 1993).
  - § 130. Care required of child
  - § 131. Contributory negligence of a child
  - § 132. Violation of statute by child
  - § 134a. Concurrent negligence of parent
  - § 179. Contributory negligence—Child
- 14 AM JUR PL & PR FORMS *Infants* (1996 Rev.).
  - § 207. Instruction to jury—Standard of care required of infant
  - § 208. Instruction to jury—Standard of care required of infant—Alternate form
  - § 209. Instruction to jury—Standard of care required of infant—Personal injury case
  - § 210. Instruction to jury—Standard of care required of infant—Conclusive presumption against contributory negligence of child of very tender years
  - § 213. Instruction to jury—Misrepresentation of age constituting fraud

**CASES:**

- Ulitsch v. Pinamang, No. CV93-0527442-S, (Feb. 4, 1998), 1998 WL 61918. "In ordinary negligence, including the operation of a motor vehicle, the standard of care of a minor is measured by the standard of conduct which will vary according to his age, judgment and experience . . . . However in statutory negligence, where a violation of the statute is negligence per se, such negligence applies to minors of the age of sixteen or over pursuant to G.S. 52-217."
- Gangemi v. Beardsworth, No. CV95 32 13 78 S (Dec. 13, 1995), 1995 WL 781424. "The defendants contend the count is deficient because Rebecca Gangemi has failed to allege that at the time of the injury the child was not teasing, tormenting, or abusing the defendants' dog. Section 22-357 creates a presumption that a child under seven years of age was not abusing the dog: "If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time the damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof shall be upon the defendant in such action." Since Rebecca Gangemi has alleged that the child was six years old at the time of the incident, she need not allege any additional facts regarding the child's conduct with respect to the dog."
- Moore v. Bunk, 154 Conn. 644, 648, 228 A.2d 510 (1967). "Under General Statute § 52-217, in actions for recovery of damages for injury to person or property, a minor under sixteen is entitled to have the trier of fact determine whether his violation of a statutory duty was negligence, while one sixteen years of age or older is subject to the general rule that the violation of an applicable statute is negligence per se."
- Santor v. Balnis, 151 Conn. 434, 436, 199 A.2d 2 (1964). "Even though the boy may have violated his statutory duty to give a signal of his intention to make a left turn, that violation would not be negligence per se in the case of a minor under sixteen years of age, as it would be in the case of an adult. General Statutes 52-217. The boy was entitled to have the jury measure his conduct by that reasonably to be expected of children of similar age, judgment and experience."
- Overlock v. Ruedemann, 147 Conn. 649, 654, 165 A.2d 335 (1960). "A minor is liable for injuries negligently inflicted by him upon another . . . . It is true that in determining the negligence of a minor the law applies to him a standard of conduct which will vary according to his age, judgment and



experience, but the law does not grant him a complete immunity from liability for his torts, even in negligence. General Statutes 52-217; Rappa v. Connecticut Co., 96 Conn. 285, 286, 114 A. 81; Colligan v. Reilly, 129 Conn. 26, 29, 26 A.2d 231; Magaraci v. Santa Marie, 130 Conn. 323, 330, 33 A.2d 424."

- Lutteman v. Martin, 20 Conn. Sup. 371, 375, 135 A.2d 600 (1957). "If the child is of sufficient age, intelligence and experience to realize the harmful potentialities of a given situation, he is required to exercise such prudence in caring for himself and such consideration for the safety of others as is common to children of like age, intelligence and experience."

**WEST KEY  
NUMBER:**

- *Infants*  
Torts # 59-64  
# 59. Liability in general  
# 60. Wilful injuries  
# 61. Negligence  
# 62. False representation  
# 63. Acts continued after majority  
# 64. Damages

**DIGESTS:**

- ALR DIGEST: *Infants*  
Capacities, disabilities, and liabilities, §§ 34-42  
Torts, §§ 37-42

**ENCYCLOPEDIAS:**

- 42 AM JUR 2d *Infants* (2000).  
Liability for torts §§ 127-148  
§§ 127-130. In general  
§§ 131-142. Negligence; standard of care  
§§ 143-148. Torts connected with contracts
- 59 AM JUR 2d *Parent & Child* (2002).  
§ 105. Offenses of child against parents
- 43 C.J.S. *Infants* (1978).  
Torts, §§ 189-195  
§ 189. Liability of infant in general  
§ 190. Malicious or intentional injuries  
§ 191. Torts connected with contracts  
§ 192. Fraud and false representations  
§ 193. Negligence  
§ 194. \_\_\_\_\_. Operation of motor vehicle  
§ 195. Damages

**ALR Annotations**

- Donald Paul Duffala, Annotation, *Modern Trends As To Contributory Negligence Of Children*, 32 ALR4th 56 (1984).
- Donald Paul Duffala, Annotation, *Modern Trends As To Tort Liability Of Child Of Tender Years*, 27 ALR4th 15 (1984).
- Wade R. Habeeb, Annotation, *Weapons: Application Of Adult Standard Of Care To Infant Handling Firearms*, 47 ALR3d 620 (1973).
- A.D. Kaufman, Annotation, *Infant's Misrepresentation As To His Age As Estopping Him From Disaffirming His Voidable Transaction*, 29 ALR3d 1270 (1970).

**Poof of Facts**

- *Negligence of bicyclist*, 12 POF3d 247 (1991).

- *Motor Vehicle Accidents—Contributory negligence by bicyclist*, 11 POF3d 503 (1991).

**TEXTS &  
TREATISES:**

- DOUGLASS B. WRIGHT ET AL., CONNECTICUT LAW OF TORTS (3rd ed. 1991).  
     § 73. Liability of infant in tort  
     § 74. Standard of care for a child  
     § 75. Actions by or against a child
- JOEL M. KAYE ET AL., 3A CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED (1996).  
     Authors' comments following Form 804.9, pp. 47-50.
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).  
     Chapter 5. Minors  
     § 5.1. Tort liabilities of minors  
         (a). Intent and standard of care  
         (b). Conn. Gen. Stat. § 52-217  
         (c). Compared with adult conduct
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (1994).  
     Chapter 9. Children and the law of torts  
     Torts committed by children, §§ 9.01 - 9.04  
     § 9.01. Intentional torts  
     § 9.02. Negligence actions involving children  
     § 9.03. —Adult standards applied to children

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**Table 1 Damage to Person or Property**

## **Conn. Gen. Stats. § 22-357 (2003)**

If any dog does any damage to either the body or property of any person, the owner or keeper, or, if the owner or keeper is a minor, the parent or guardian of such minor, shall be liable for such damage, except when such damage has been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time the damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof thereof shall be upon the defendant in such action.

**Table 2 Violation of Statute by Minor**

## **Conn. Gen. Stats. § 52-217 (2003)**

In all actions for recovery of damages for injury to person or property, in which the plaintiff or defendant was a minor under sixteen years of age at the time such cause of action arose, it shall be a question of fact to be submitted to the judge or jury to determine whether or not such minor plaintiff or minor defendant was in the exercise of due care, when there is a violation of statutory duty by such plaintiff or defendant.

## **Figure 1 Action against Minor and Parents for Injury to Another Minor**

### **FIRST COUNT – ASSAULT**

1. The plaintiff (*name*), hereinafter referred to as the minor plaintiff, is a minor, and brings this action by the plaintiff (*name*), hereinafter referred to as the plaintiff father, his parent and next friend.

2. The defendant (*name*), hereinafter referred to as the minor defendant, is a minor, and the defendant (*name of father*), and the defendant (*name o f mother*), hereinafter referred to as the defendant parents, are the parents of the minor defendant.

3. On or about (*date and time*) the minor plaintiff, (*number*) years of age, was a lawful pedestrian on (*location-street, town, etc.*).

4. At that time and place, the minor defendant assaulted and beat the minor plaintiff, thereby causing the minor plaintiff to sustain and suffer personal injuries and losses.

5. The assault was willful, wanton and malicious.

6. (*State injuries*).

### **SECOND COUNT – NEGLIGENCE**

1. Paragraphs 1 - 3 inclusive of the First Count are made paragraphs 1- 3 inclusive of the Second Count.

4. At that time and place, the minor defendant negligently and carelessly caused the plaintiff to be struck in the right eye, resulting in the severe personal injuries and losses hereinafter set forth.

5. Paragraph 6 of the First Count is hereby made paragraph 5 of this count.

### **THIRD COUNT - AGAINST PARENTS**

1. Paragraphs 1 - 6 inclusive of the First Count are made paragraphs 1 - 6 inclusive of the Third Count.

7. At all times herein mentioned the defendant parents were the parents and natural guardians of the minor defendant, and the minor defendant was a member of his parents' household when the minor defendant wilfully, wantonly and maliciously caused the severe personal injuries and losses of the minor plaintiff as herein set forth.

8. The minor plaintiff's injuries and losses were caused by the carelessness and negligence of the defendant parents, in one or more of the following ways:

a. In that they failed to exercise reasonable care in controlling their minor child so as to prevent him from harming the plaintiff;

b. in that the defendant parents negligently and carelessly failed to restrain their minor son, although they knew or should have known that the minor possessed a violent temper and had a propensity for violence.

9. At all times herein mentioned, the minor defendant was an unemancipated, minor and the injuries described herein were caused by the wilful or malicious acts of the minor defendant, and claim is made against the defendant parents and natural guardians of the minor defendant pursuant to the provisions of Section 52-572 of the General Statutes.

### **FOURTH COUNT - PLAINTIFF FATHER AND ALL DEFENDANTS**

1. Paragraphs 1 - 9 inclusive of the Third Count are made paragraphs 1- 9 inclusive of this Fourth Count.

10. At all times herein mentioned the plaintiff father was the father and natural guardian of the minor plaintiff.

11. As a further result of the wilful, wanton, and malicious conduct of the minor defendant, the plaintiff father was forced to expend the sum of \$      for x-rays, medicines and medical care on behalf of his minor son, and will be forced to expend further sums for the same in the future.

The minor plaintiff claims damages of the minor defendant.

The minor plaintiff claims damages of the defendant parents.

The plaintiff father claims damages of all defendants.

## Section 4.2

# Parental Liability for Torts of Minors

*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to parents' liability under Connecticut law for injuries or damages inflicted by their unemancipated children

### **DEFINITIONS:**

- **Parental liability for torts of minors:**
  - (a) The parent or parents or guardian, other than a temporary guardian appointed pursuant to section 45a-622, of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults.
  - (b) This section shall not be construed to relieve the minor or minors from personal liability for the damage or injury.
  - (c) The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.
  - (d) As used in this section, "damage" shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof. CONN. GEN. STATS. § 52-572(2003).
- **Wilful and malicious injury:** "is one inflicted intentionally without just cause or excuse. It does not necessarily involve the ill will or malevolence shown in express malice. Nor is it sufficient to constitute such an injury that the act resulting in the injury was intentional in the sense that it was the voluntary action of the person involved. Not only the action producing the injury but the resulting injury must be intentional. "A wilful or malicious injury is one caused by design. Wilfulness and malice alike import intent. . . . [Its] characteristic element is the design to injure, either actually entertained or to be implied from the conduct and circumstances." *Sharkey v. Skilton*, 83 Conn. 503, 507, 77 A. 950; *Simenaukas v. Connecticut Co.*, 102 Conn. 676, 129 A. 790; 20 R. C. L. p. 21." *Rogers v. Doody*, 119 Conn. 532, 534, 178 A. 51 (1935).

### **STATUTES:**

- CONN. GEN. STATS. (2003).
  - Chapter 1. Construction of statutes
    - § 1-1d. "Minor," "Infant," "Infancy," "Age Of Majority," defined.
  - Chapter 435. Dogs and other companion animals
    - [§ 22-357. Damage to person or property](#)
  - Chapter 815t. Juvenile matters

§ 46b-150d. Emancipation of minor, effect on parental liability  
Chapter 925. Statutory rights of action and defenses  
[§ 52-572. Parental liability for torts of minors.](#)

**LEGISLATIVE:**

- *George Coppolo, Parental Liability And Victims Rights*, CONNECTICUT GENERAL ASSEMBLY. OFFICE OF LEGISLATIVE RESEARCH REPORT no. 98-R-0312. <http://www.cga.state.ct.us/ps98/rpt/olr/98-r-0312.doc>

**FORMS:**

- 2 CONN. PRACTICE BOOK (1997).  
[FORM 804.9. Action against minor and parents for injury to another minor](#)
- 19 AM JUR PL & PR FORMS *Parent & Child* (1997 Rev.).  
Liability of parent for acts of child §§ 152-163
  - § 155. Complaint, petitions, or declarations—Injury to property by minor
  - § 156. Complaint, petitions, or declarations—Injury inflicted by minor child using hammer and butcher knife—Negligent failure to control child
  - § 157. Complaint, petitions, or declarations—Injury, inflicted by minor child—Negligent failure to control child
  - § 158. Complaint, petitions, or declarations—Injury inflicted by minor child with gun—Negligence of parent in leaving gun accessible to child
  - § 159. Complaint, petitions, or declarations—Against parent and minor child—Injury inflicted by minor child with gun—Negligent entrustment of firearm
  - § 160. Complaint, petitions, or declarations—Injury inflicted by minor child using air rifle—Negligence of parents in entrusting air rifle to minor child
  - § 161. Complaint, petitions, or declarations—For damages to automobile taken by defendant's minor child—Statutory liability
  - § 162. Complaint, petitions, or declarations—Allegation—Parents' failure to exercise proper control over child

**JURY INSTRUCTIONS:**

- DOUGLASS B. WRIGHT AND WILLIAM L. ANKERMAN, CONNECTICUT JURY INSTRUCTIONS (CIVIL) (4<sup>th</sup> ed. 1993).  
§ 517. Parent's liability for misconduct of child

**CASES:**

- *Robyn v. Palmer-Smith*, No. CV99-0174453S, 2001 WL 237112 (Feb. 20, 2001). "In this case, the plaintiff alleges that the defendant failed to exercise reasonable care in controlling her son and preventing him from harming others and that she failed to control his abuse of illegal substances although she knew or should have known that her son was involved with them. Consequently, the court finds that the language of count two sufficiently alleges that the defendant knew or should have known of her child's dangerous tendencies and therefore, the plaintiff has sufficiently alleged an exception to the general rule that a parent is not liable for the torts of its minor child."
- *Kaminski v. Fairfield*, 216 Conn. 29, 30, 578 A.2d 1048 (1990). "The sole issue in this appeal is whether a request for mental health assistance to control the behavior of an adult son supports the imposition of tort liability on his parents for injuries inflicted by the son on a police officer accompanying the requested mental health workers to the parents' home."

- Gearity v. Salvo, 40 Conn. Supp. 185,187, 485 A.2d 940 (1984). "This court concludes that 'control of the minor' is a determining factor in the imposition of liability under § 52-572 . . . ."
- Lamb v. Peck, 183 Conn. 470, 473, 441 A.2d 14 (1981). "The applicable statutory requirement for parental liability is that the minor wilfully or maliciously causes injury to a person. General Statutes 52-572. We conclude that this requirement is met where a minor intentionally aids another who intentionally injures a third person. Because there was evidence indicating that all four minor defendants acted intentionally and in concert, the trial court correctly imposed liability on the defendant parents under 52-572."
- Watson v. Gradzik, 34 Conn. Supp. 7,10-11, 373 A.2d 191 (1977). "The legislature passed this statute [§ 52-572] for two apparent reasons. One reason is to deter juvenile delinquency by placing upon the parent the obligation to control his minor child so as to prevent him from intentionally harming others . . . . The other is to compensate innocent victims for the damage caused by minor tortfeasors. The court is of the opinion that the regulation has a rational relationship to the preservation and promotion of the public welfare and that the defendants have failed to prove otherwise. The court holds the statute to be constitutional."
- Groton v. Medbery, 6 Conn. Cir. 671, 673, 301 A.2d 270 (1972). "In order for the plaintiff to recover, the court, after such consideration, must find from the facts provable under the substituted complaint that the injury to the police officer was caused wilfully and maliciously by the minor defendant. This statutory limitation to the veracious liability of the parent is directly related to the purpose of the law, which is to place upon the parent the obligation to control his minor child as to prevent the child from intentionally harming others."
- LaBonte v. Federal Mutual Ins. Co., 159 Conn. 252, 256, 268 A.2d 663 (1970). "At common law parents were not liable for the torts of their children unless they themselves were independently negligent, as where they had entrusted a dangerous instrumentality to their children or had failed to restrain their children who they knew possessed dangerous tendencies . . . . The statute [§ 52-572] in question thus creates liability where none existed at common law, and the liability is absolute, in the sense that no negligence need be shown to exist on the part of the parents. If the child is liable, as is admitted in the present case, the parents are jointly and severally liable with him."

**WEST KEY  
NUMBER:**

- *Parent and Child*  
#13.5. Torts  
(1). In general  
(2). Liability for torts or misconduct of child in general  
(4). Negligent supervision or control of child by parent  
(5). Proceedings

**DIGESTS:**

- ALR DIGEST: *Parent and Child*  
§ 11. Liability for child's torts, negligence, or crimes

**ENCYCLOPEDIAS:**

- 59 AM JUR 2d *Parent & Child* (2002).  
Liability of parent for conduct of children; Offenses of child against parents §§ 96-105  
§ 96. Generally  
§ 97. Where instrumentality is entrusted or accessible to child  
§ 98. —Gun



- § 99. Failure to control child
- § 100. Tort of insane or mentally deficient child
- § 101. Liability of parent as employer or principal
- § 102. When parent directs, consents to, or ratifies act of child
- § 103. Statutory liability
- § 104. Criminal responsibility
- 67A C.J.S. Parent & Child (2002).
  - Tort liability and rights of action, §§ 309-344
  - Liability of parent for torts of child
    - § 309. Generally
    - § 310. Acts of child as agent of parent
    - § 311. Negligence of parent as cause of injury
    - § 312. Negligence of parent as cause of injury—Negligent supervision, control, or entrustment
    - § 313. Actions
    - § 314. Actions—Evidence
    - § 315. Actions—Questions of fact
  - Special parental relationships
    - §§ 345-350. Persons in loco parentis
    - §§ 351-356. Stepparents
    - §§ 357-358. Grandparents

#### ALR Annotations

- Kimberly C. Simmons, *Liability Of Adult Assailant's Family To Third Party For Physical Assault*, 25 ALR5th 1 (1994).
- Michael J. Yaworsky, *Jurisdiction Or Power Of Juvenile Court To Order Parent Of Juvenile To Make Restitution For Juvenile's Offense*, 66 ALR4th 985 (1988).
- Donald Paul Duffala, *Modern Trends As To Tort Liability Of Child Of Tender Years*, 27 ALR4th 15 (1984).
- Wanda Ellen Wakefield, *Liability Of Donor Of Motor Vehicle For Injuries Resulting From Owner's Operation*, 22 ALR4th 738(1983).
- Eunice A. Eichelberger, *Criminal Responsibility Of Parent For Act Of Child*, 12 ALR4th 673 (1982).
- Bruce I. McDaniel, *Liability Of Owner Of Powerboat For Injury Or Death Allegedly Caused By One Permitted To Operate Boat By Owner*, 71 ALR3d 1018 (1976).
- George Priest, *Liability of Parent For Injury Caused By Child Riding Bicycle*, 70 ALR3d 611 (1976).
- Wade R. Habeeb, *Parents' Liability For Injury Or Damage Intentionally Inflicted By Minor Child*, 54 ALR3d 974 (1973).
- *Validity and Construction of Statute Making Parents Liable For Torts Committed By Their Minor Children*, 8 ALR3d 612 (1966).

#### Poof of Facts

- *Parental Failure To Control Child*, 45 POF2d 549 (1986).
- *Negligence of bicyclist*, 12 POF3d 247 (1991).
- *Motor Vehicle Accidents—Contributory negligence by bicyclist*, 11 POF3d 503 (1991).

#### **TEXTS & TREATISES:**

- DOUGLASS B. WRIGHT ET AL., *CONNECTICUT LAW OF TORTS* (3rd ed. 1991).
  - § 77. Parent and child
- JOEL M. KAYE ET AL., *3A CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED* (1996).

Authors' comments following Form 804.9, pp. 47-50.

- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).  
Chapter 5. Minors  
§5-2 Parental liability for torts of minors
  - (a). Common law
  - (b). Conn. Gen. Stat. §52-572
    - (1). History
    - (2). Custody and control
    - (3). Necessary intent
    - (4). Statute of limitations
    - (5). Insurance
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (1994).  
Chapter 9. Children and the law of torts  
Torts committed by children, §§ 9.01 - 9.04  
§ 9.04. Parental responsibility for tortious acts of children
- RESTATEMENT OF THE LAW OF TORTS 2D  
§ 316. Duty of parent to control conduct of child

**LAW REVIEWS:**

- Kathryn Calibey , *Connecticut's Parent-Child Immunity Doctrine*, 65 CONNECTICUT BAR JOURNAL 210 (June 1991).  
Includes in Appendix, "State Survey of Parent-Child Immunity in Negligence Action," pp. 220-223.
- Emogene C. Wilhelm, Note, *Vicarious Parental Liability In Connecticut: Is It Effective?* 7 BRIDGEPORT LAW REVIEW 99 (1986).
- Richard G. Kent, *Parental Liability For Torts Of Children*, 50 CONNECTICUT BAR JOURNAL 452 (1976).

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**Table 3 Parental liability for torts of minors**

<b>Conn. Gen. Stats. § 52-572 (2003)</b>	
(a)	The parent or parents or guardian, other than a temporary guardian appointed pursuant to section 45a-622, of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding five thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults.
(b)	This section shall not be construed to relieve the minor or minors from personal liability for the damage or injury.
(c)	The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.
(d)	As used in this section, "damage" shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof.

# Section 4.3

## Actions By or Against Minors

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*A Guide to Resources in the Law Library*

### **SCOPE:**

Bibliographic resources relating to tort actions brought by or against minors in Connecticut including parent-child immunity.

### **DEFINITIONS:**

- **Next friend:** "Under our practice an action on behalf of a minor is properly brought by the minor by next friend." Tulin v. Tulin, 124 Conn. 518, 522, 200 A. 819 (1938).
- **Parent-Child Immunity:** "bars an unemancipated minor from suing his or her parent for injuries caused by the negligence of that parent." Dubay v. Irish, 207 Conn. 518, 523, 542 A.2d 711 (1988).
- **Exceptions:** "Connecticut law recognizes only four exceptions to the parental immunity doctrine. First, an unemancipated minor can sue the employer of a parent whose negligence in the course of employment injured the child, thereby putting the parent at risk of an indemnity suit. Chase v. New Haven Waste Material Corp., 111 Conn. 377, 380, 150 A. 107 (1930). Second, a minor can sue a parent if the child was emancipated prior to the tortious conduct. See Wood v. Wood, 135 Conn. 280, 283, 63 A.2d 586 (1948). Third, an unemancipated minor can sue a parent for injuries received through the negligent conduct of a business enterprise conducted away from the home. Dzenutis v. Dzenutis, 200 Conn. 290, 300, 512 A.2d 130 (1986). Fourth, an unemancipated minor can sue a parent for injuries resulting from the negligent operation of a motor vehicle, aircraft or waterborne vessel. General Statutes 52-572c." Squeglia v. Squeglia, 34 Conn. App. 866, 869, 644 A.2d 378 (1994), cert.granted in part 231 Conn. 920, aff'd 234 Conn. 259.
- **Purpose:** ". The purpose of the doctrine is to preserve the integrity and unity of the family and to avoid unnecessarily injecting 'the machinery of the state' into the day-to-day exercise of parental discretion." Squeglia v. Squeglia, 234 Conn. 259, 265, 661 A.2d 1007 (1995).

### **STATUTES:**

- CONN. GEN. STATS. (2003).
  - Chapter 801b. Probate court procedures
    - § 45a-132. Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons
  - Chapter 900. Court practice and procedure
    - § 52-204. Recovery of expenditures by husband or parent
  - Chapter 925. Statutory rights of action and defenses
    - § 52-572c. Parent-child immunity abrogated in certain negligence actions

### **FORMS:**

- 2 CONN. PRACTICE BOOK (1997).  
[FORM 804.9. Action against minor and parents for injury to another minor](#)
- 14 AM JUR PL & PR FORMS *Infants* (1996 Rev.).  
Torts §§ 191-222
  - § 194. Complaint, petition, or declaration—Against operator of summer camp—Negligence in supervision of care of infant
  - § 196. Complaint, petition, or declaration—Wrongful death of minor from exploding dynamite—Attractive nuisance—Dynamite left on land by former owner
  - § 197. Complaint, petition, or declaration—Wrongful death of minor by drowning
  - § 198. Complaint, petition, or declaration—Injuries to child—Attractive nuisance—Injuries incurred while playing on push car
  - § 199. Complaint, petition, or declaration—Injuries to child—Attractive nuisance—Building supplies near railroad tracks
  - § 200. Complaint, petition, or declaration—Allegation—Against manufacturer of drug—Birth defects resulting from drug
  - § 201. Complaint, petition, or declaration—Against infant—Fraudulent misrepresentation of age inducing contract
  - § 202. Complaint, petition, or declaration—Against infant and parent—Negligent entrustment of weapon
  - § 203. Complaint, petition, or declaration—Against infant and parent—Negligent entrustment of weapon—Alternate form
  - § 204. Complaint, petition, or declaration—Against department store—False imprisonment of minor

### **JURY INSTRUCTIONS:**

- DOUGLASS B. WRIGHT AND WILLIAM L. ANKERMAN, CONNECTICUT JURY INSTRUCTIONS (CIVIL) (4<sup>th</sup> ed. 1993).
  - § 130. Care required of child
  - § 131. Contributory negligence of a child
  - § 132. Violation of statute by child
  - § 134a. Concurrent negligence of parent
  - § 179. Contributory negligence—Child
- 14 AM JUR PL & PR FORMS *Infants* (1996).
  - § 207. Instruction to jury—Standard of care required of infant
  - § 208. Instruction to jury—Standard of care required of infant—Alternate form
  - § 209. Instruction to jury—Standard of care required of infant—Personal injury case
  - § 210. Instruction to jury—Standard of care required of infant—Conclusive presumption against contributory negligence of child of very tender years
  - § 213. Instruction to jury—Misrepresentation of age constituting fraud

### **CASES:**

- Crotta v. Home Depot, Inc., 249 Conn. 634, 644-645, 732 A.2d 767 (1999).  
"We conclude, therefore, that the doctrine of parental immunity operates to preclude the parent of a minor plaintiff from being joined as a third party defendant for purposes of apportionment of liability, contribution or indemnification based on the parent's allegedly negligent supervision of the minor plaintiff."
- Purzycki v. Town of Fairfield, 244 Conn. 101, 115, 708 A.2d 937 (1998).

"They state that a teacher in a public school stands in loco parentis toward a pupil, and that the parental immunity doctrine bars an unemancipated minor from bringing an action against his or her parents for injuries sustained by the negligence of the parents. Completing the syllogism, they argue that the tort liability of school officials for negligence must also fall within parental immunity. We are not persuaded."

- Ascutto v. Farricielli, 244 Conn. 692, 701, 711 A.2d 708 (1998). "The primary focus of the parental immunity doctrine in Connecticut is the protection of the relationship between the parent and the child. The protection of that relationship enables the parent to raise the child effectively without undue interference from the state."
- LaRosa v. Lupoli, 44 Conn. App. 225, 228, 688 A.2d 356 (1997), cert. den. 240 Conn. 918. "Thus, there is no requirement for service on a parent or guardian in Connecticut when the defendant is a minor."
- Squeglia v. Squeglia, 34 Conn. App. 866, 869, 644 A.2d 378 (1994), cert. granted in part 231 Conn. 920, aff'd 234 Conn. 259.
- Dubay v. Irish, 207 Conn. 518, 530, 542 A.2d 711 (1988). "We conclude that the plaintiff has failed in his burden to prove that a child had either a statutory or a common law right of action in tort against a parent prior to 1818 when the Connecticut constitution was adopted."
- Overlock v. Ruedemann, 147 Conn. 649, 654, 165 A.2d 335 (1960). "We see no logic or reason in affording an immunity when the plaintiff and the defendant are unemancipated minor children in the same family."

**WEST KEY  
NUMBER:**

- *Infants*  
Torts # 59-64  
# 59. Liability in general  
# 60. Wilful injuries  
# 61. Negligence  
# 62. False representation  
# 63. Acts continued after majority  
# 64. Damages

**DIGESTS:**

- ALR DIGEST: *Infants*  
Capacities, disabilities, and liabilities, §§ 34-42  
Torts, §§ 37-42

**ENCYCLOPEDIAS:**

- 42 AM JUR 2d *Infants* (2000).  
Actions §§ 149-235  
Representation of infant, §§ 158-201  
§ 158. Generally; distinction between next friend and guardian ad litem  
§ 168. Qualifications of representative; generally  
§ 169. Disqualification of representative
- 59 AM JUR 2d *Parent & Child* (2002).  
Actions involving parent and child §§ 106-121  
§§ 106-107. In general  
§§ 110-121. Child against parent
- 43 C.J.S. *Infants* (1978).  
Torts, §§ 189-195  
§ 189. Liability of infant in general  
§ 190. Malicious or intentional injuries  
§ 191. Torts connected with contracts  
§ 192. Fraud and false representations

- § 193. Negligence
- § 194. \_\_\_\_\_. Operation of motor vehicle
- § 195. Damages
- 67A C.J.S. Parent & Child (2002).
  - Tort liability and actions between parent and child
  - § 316. Parent against child
  - § 317. Child against parent
  - § 318. Child against parent—Limitations to rule
  - § 319. Child against parent—Exceptions to rule
  - § 320. Child against parent—Abolishment of rule

#### ALR Annotations

- Donald Paul Duffala, Annotation, *Modern Trends As To Contributory Negligence Of Children*, 32 ALR4th 56 (1984).
- Donald Paul Duffala, Annotation, *Modern Trends As To Tort Liability Of Child Of Tender Years*, 27 ALR4th 15 (1984).
- Romualdo P. Eclavea, Annotation, *Liability Of Parent For Injury To Unemancipated Child Caused By Parent's Negligence—Modern Cases*, 6 ALR4th 1066 (1981).

#### Poof of Facts

- *Negligence of bicyclist*, 12 POF3d 247 (1991).
- *Motor Vehicle Accidents—Contributory negligence by bicyclist*, 11 POF3d 503 (1991).

#### **TEXTS & TREATISES:**

- DOUGLASS B. WRIGHT ET AL., CONNECTICUT LAW OF TORTS (3rd ed. 1991).
  - § 75. Actions by or against a child
- JOEL M. KAYE ET AL., 3A CONNECTICUT PRACTICE, PRACTICE BOOK ANNOTATED (1996).
  - Authors' comments following Form 804.9, pp. 47-50.
- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, TORT REMEDIES IN CONNECTICUT (1996).
  - Chapter 5. Minors
    - § 5.3. Actions by or against a minor
      - (a). Parent-child immunity
      - (b). Suits by or on behalf of minors
      - (c). Limitations of actions
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (1994).
  - Chapter 9. Children and the law of torts
    - Parental torts and the family immunity doctrine, §§ 9.05 - 9.10
      - § 9.06. Parental torts against children and the family immunity doctrine
      - § 9.07. —Judicial erosion of the Immunity Doctrine
      - § 9.08. —Exceptions to the Parental Immunity Doctrine
      - § 9.10. Parental discretion and the family relationship

#### **LAW REVIEWS:**

- Melissa B. Gosart-Convertito, Casenote, *Ascutto V. Farricielli: Connecticut's Failure To Reform Familial Tort Liability*, 19 QUINNIPIAC LAW REVIEW 581 (2000).
- Kathryn Calibey, *Connecticut's Parent-Child Immunity Doctrine*, 65 CONN. B.J. 210 (1991).

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## **Connecticut General Assembly. Office of Legislative Research Report 97-R-0163**

Whether parents can seek to have a child declared emancipated

Summary

When the order must be granted

Nature of petition for emancipation

Hearing and appeal

Emancipation of minors

FROM: George Coppola, Chief Attorney

You asked whether parents can seek to have a child declared emancipated.

### **SUMMARY**

There is a statutory procedure by which a 16 or 17 year old minor, or his parents or guardian, can petition the Superior Court for a determination that the minor is emancipated (CGS §§ 46b-150, 46b-150e, copy enclosed). The court may grant the order for several reasons. One is that the minor is living separately from the parent and is managing his own financial affairs regardless of the source of income. One of the consequences of emancipation is that the parent would no longer be legally liable to support the child.

### **WHEN ORDER MUST BE GRANTED**

The court is required to enter an order declaring that the minor is emancipated if, after a hearing, it finds *any* of the following:

1. the minor has entered into a valid marriage, whether or not that marriage has been terminated;
2. the minor is on active duty in the armed forces;
3. the minor willingly lives separate and apart from his parents or guardians with or without their consent, and that the minor is managing his own financial affairs; or
4. for good cause shown, it is in the best interest of either or both parties.

### **NATURE OF PETITION FOR EMANCIPATION**

The petition for emancipation must plainly state:

1. the relevant facts;
2. the name, date of birth, sex, and residence of the minor;
3. the name and residence of the parents or guardian; and



4. the name of the petitioner and his relationship to the minor.

## **HEARING AND APPEAL**

Upon the filing of a petition, the court is required to summon the minor and his parents or guardian and may require a probation officer, the commissioner of children and families, or any other person to investigate the allegations in the petition and file a report. Also, the court may appoint counsel for the minor and for the minor's parents or guardian, and may make other appropriate orders. Any person named in a petition aggrieved by any order of the Superior Court may appeal to the Appellate Court.

## **EFFECT OF EMANCIPATION ORDER**

A court order granted under this act authorizes a minor to:

1. consent to medical, dental or psychiatric care;
2. enter into a binding contract;
3. sue and be sued in his own name;
4. be entitled to his own earnings and be free of control by his parents and guardians;
5. establish his own residence;
6. buy and sell property;
7. enroll in any school or college;
8. get a driver's license, a marriage license, and register a motor vehicle;
9. execute a release of liability to the motor vehicle commissioner in connection with an automobile accident; and
10. enlist in the armed forces.

Further, a court order of emancipation relieves the parents or guardians of:

1. obligations to support the minor;
2. obligations relating to his school attendance; and
3. liability for willful or malicious damage caused by the minor.

## **COMMON LAW EMANCIPATION**

The statutes do *not* affect the status of minors who are, or may become, emancipated under the common law (judge-made law) of Connecticut.

Under such common law, a minor is deemed to be emancipated if a court determines, based upon the particular facts of his situation, that he has generally established an independent life. Some factors which the Connecticut courts have considered in determining whether or not a minor is emancipated include:

1. residence of the minor;

2. control and management of the minor's finances;
3. marital status of the minor;
4. employment status; and
5. nature and existence of participation by the minor in day to day family life of the parents.

GC:pa

# GLOSSARY

- ABUSED** “means that a child or youth (A) has had physical injury or injuries inflicted upon him other than by accidental means, or (B) has injuries which are at variance with the history given of them, or (C) is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment;” Conn. Gen. Stats. § 46b-120(3) .....Chapter 3, Introduction
- CHILD’S ATTORNEY:** “... the **attorney for the child** is just that, an *attorney* arguing on behalf of his or her client, based on the evidence in the case and the applicable law.” Ireland v. Ireland, 246 Conn. 413, 438, 717 A.2d 986 (1998) .....Chapter 2, Introduction
- CHILD ABUSE AND NEGLECT** “means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by a person who is responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary;” 42 U.S.C. § 5106g(4). [see also 45 CFR §1340.2(d)] .....Chapter 3, Introduction
- CHILD:** “means any person under sixteen years of age ...;” Conn. Gen. Stats. §46b-120(1) .....Chapter 1, Introduction
- DELINQUENT ACT:** “means the violation of any federal or state law or municipal or local ordinance, other than an ordinance regulating the behavior of a child in a family with service need, or the violation of any order of the Superior Court;” Conn. Gen. Stats. §46b-120(10) Chapter 1, Introduction
- FAMILY WITH SERVICE NEEDS:** “means a family which includes a **child** who (A) has without cause run away from his parental home or other properly authorized and lawful place of abode; (B) is beyond the control of his parent, parents, guardian or custodian; (C) has engaged in indecent or immoral conduct; (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations; or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child;” Conn. Gen. Stats. §46b-120(7) .....Chapter 1, Introduction
- GUARDIAN AD LITEM:** “A lawyer appointed as ‘**guardian ad litem**’ for a child is an officer of the court appointed to protect the child’s interests without being bound by the child’s expressed preferences.” American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, Standards for the child’s attorney A-2 (1996). “Typically, the **child’s attorney** is an advocate for the child, while the **guardian ad litem** is the representative of the child’s best interests.” Newman v. Newman, 235 Conn. 82, 96, 663 A.2d 980 (1995) .....Chapter 2, Introduction
- GUARDIAN AD LITEM:** “shall mean a person appointed by the court during any proceeding in which a minor child, undetermined or unborn or class of such person, or a person whose identity or address is unknown, or an incompetent person is a party, to represent and protect the interests of such parties.” Connecticut Probate Practice Book, Rule 1.1.09 .....Chapter 2, Introduction

**INFANT or INFANCY:** “Except as otherwise provided by statute ... the terms ‘**minor**’, ‘**infant**’ and ‘**infancy**’ shall be deemed to refer to a person under the age of eighteen years and any person eighteen years of age or over shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities as persons heretofore had at twenty-one years of age, and ‘**age of majority**’ shall be deemed to be eighteen years.” Conn. Gen. Stats. §1-1d ..... Chapter 1, Introduction

**MINOR:** “Except as otherwise provided by statute ... the terms ‘**minor**’, ‘**infant**’ and ‘**infancy**’ shall be deemed to refer to a person under the age of eighteen years and any person eighteen years of age or over shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities as persons heretofore had at twenty-one years of age, and ‘**age of majority**’ shall be deemed to be eighteen years.” Conn. Gen. Stats. §1-1d .....Chapter 1, Introduction

**NEGLECTED:** “A child or youth may be found ‘**neglected**’ who (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being, or (D) has been abused;” Conn. Gen. Stats. § 46b-120(8) .....Chapter 3, Introduction

**NEGLIGENT TREATMENT OF MALTREATMENT:** “includes failure to provide adequate food, clothing, shelter or medical care.” 45 C.F.R. § 1340.2(d)(2)(i) .....Chapter 3, Introduction

**STATUS OFFENSE:** is conduct which if engaged in by an adult would not be legally prohibited.” In the Interest of R.B., 621 A.2d 1038, 1042 (PA Super. 1993) .....Chapter 1, Introduction

**YOUTH:** “means any person sixteen to eighteen years of age; Conn. Gen. Stats. §46b-120(2) .....Chapter 3, Introduction

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